

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC., (CAUSE NO. 2:21-CV-463-JRG
)
Plaintiff, ()
vs. ()
SAMSUNG ELECTRONICS CO., LTD., ()
et al., () MARSHALL, TEXAS
(APRIL 6, 2023
Defendants.) 1:30 P.M.

VOLUME 3

PRETRIAL CONFERENCE

BEFORE THE HONORABLE ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

SHAWN McROBERTS, RMR, CRR
100 E. HOUSTON STREET
MARSHALL, TEXAS 75670
(903) 923-8546
shawn_mcroberts@txed.uscourts.gov

A P P E A R A N C E S

FOR THE PLAINTIFF: IRELL & MANELLA, LLP -
LOS ANGELES
1800 AVENUE OF THE STARS
SUITE 900
LOS ANGELES, CA 90067-4276
(310) 203-7096
BY: MR. JASON SHEASBY

McKOOL SMITH, P.C. - MARSHALL
104 E. HOUSTON ST., SUITE 300
MARSHALL, TEXAS 75670
(903) 923-9000
BY: MS. JENNIFER TRUELOVE

FOR THE DEFENDANTS: FISH & RICHARDSON, PC -
DALLAS
1717 MAIN STREET, SUITE 5000
DALLAS, TEXAS 75201
(214) 747-5070
BY: MR. MATTHEW COLVIN
MR. THOMAS REGER

FISH & RICHARDSON, PC -
NEW YORK
7 TIMES SQUARE, 20TH FLOOR
NEW YORK, NEW YORK 10036
(404) 724-2764
BY: MS. KATHERINE REARDON

GILLAM & SMITH, LLP
102 N. COLLEGE, SUITE 800
TYLER, TEXAS 75702
(903) 934-8450
BY: MR. TRAVIS UNDERWOOD

OFFICIAL REPORTER: SHAWN M. McROBERTS, RMR, CRR
100 E. HOUSTON STREET
MARSHALL, TEXAS 75670
(903) 923-8546

1 THE COURT: Good afternoon. Please be seated.

2 For the record, we're here for the completion of the
3 pretrial conference in Netlist versus Samsung Electronics, et
4 al., which is our Case No. 2:21-463. And this is specifically
5 the exhibit hearing in the case.

6 Would counsel state their appearances for the record?

7 MS. TRUELOVE: Good afternoon, Your Honor. Jennifer
8 Truelove for Plaintiff Netlist. With me today is Mr. Jason
9 Sheasby.

10 MR. SHEASBY: Good afternoon, Your Honor.

11 MS. TRUELOVE: I have to apologize for not rising.
12 I got my foot caught in my computer cord when I tried to
13 stand. But other than that mishap, we're ready to proceed
14 today.

15 THE COURT: All right. Thank you, Ms. Truelove.

16 MR. UNDERWOOD: Good afternoon, Your Honor. Travis
17 Underwood on behalf of the Samsung Defendants. I'm joined by
18 Ms. Kate Reardon.

19 MS. REARDON: Good afternoon.

20 MR. UNDERWOOD: Mr. Tom Reger.

21 MR. REGER: Good afternoon.

22 MR. UNDERWOOD: And Mr. Matt Colvin. And we're
23 ready to proceed.

24 THE COURT: All right. Thank you, Mr. Underwood.

25 I have copies of a variety of filings that counsel have

1 made in an effort to gather the objections into buckets, but I
2 am happy to proceed in whatever counsel think is the most
3 efficient manner. I typically do start with the Defendants'
4 objections to the Plaintiff's exhibits, but if counsel have a
5 better idea I'm open to that.

6 MR. SHEASBY: Your Honor, I believe that that's what
7 we agreed to between ourselves, that they would start with
8 their objections to our exhibits.

9 THE COURT: All right. Thank you, Mr. Sheasby.

10 In that case, I'll hear from Defendants about their
11 objections.

12 Good afternoon, Mr. Reger.

13 MR. REGER: Hello again, Your Honor. Tom Reger on
14 behalf of Samsung.

15 May it please the Court?

16 THE COURT: Yes.

17 MR. REGER: Your Honor, what we will address first
18 is a filing made by the Plaintiff Proffer No. 1.

19 And if I could have my slides, please.

20 Your Honor, before we get into the specific proffer and
21 the specific exhibits that they are seeking to pre-admit, it's
22 important to set the stage and set the context for that
23 submission to Your Honor.

24 There were two motions in limine filed by Samsung that
25 were granted with respect to certain issues. So Motion in

1 Limine No. 1 relates to Samsung's alleged failure to supply
2 memory to Netlist. That was granted. The second motion in
3 limine was with respect to the alleged value of the supply
4 agreement under the JDLA.

5 Now, to take a step back for a moment, there was a case
6 in the Central District of California between Netlist and
7 Samsung about a joint development and license agreement. Both
8 sides were represented by counsel. There was a full case
9 presented, evidence about the allegations of breach --

10 THE COURT: I have heard about the result of the
11 jury trial in California.

12 MR. REGER: Understood, Your Honor. Thank you.

13 So with that context in mind, Your Honor, we moved in
14 limine to keep out argument and evidence regarding Samsung's
15 alleged failure to supply memory to Netlist, which was the
16 basis for that breach of contract action, one of two, but
17 the only one at issue here. The second motion in limine was
18 with respect to the alleged value of that supply agreement to
19 Netlist. So it's two different issues.

20 Now, while Judge Gilstrap -- while this Court granted
21 Motion in Limine No. 2, he allowed an exception to allow
22 Defendants--excuse me--to allow the Plaintiff's damages expert
23 Mr. Kennedy to talk about the value of that supply. Motion in
24 Limine No. 1 was granted without a similar exception. So
25 while someone may open the door, as it stands, Netlist is

1 wholly precluded from offering any argument or evidence
2 regarding Samsung's failure to supply memory to Netlist.

3 Now, throughout this proffer they suggest that they rely
4 on Motion in Limine No. 2. They tell Your Honor that the
5 exhibit relates to the value of supply, and then they point to
6 Mr. Kennedy's report as if to suggest that this is somehow
7 outside the prohibition of Motion in Limine No. 2.

8 Now, we are going to walk through the exhibits one by
9 one, but we'll see that the exhibits being presented actually
10 fall within the prohibitions of Samsung's Motion in Limine
11 No. 1 which, again, was granted without exception and without
12 -- it was fully granted, Your Honor.

13 Now, during argument the Court said it would be an active
14 gatekeeper to keep out evidence and argument that would
15 inflame the jury, and pre-admitting these exhibits would
16 create a mess out of an orderly patent infringement case and
17 would run afoul of that gatekeeper role. If Netlist thinks we
18 opened the door, then the Court will certainly entertain a
19 request from Netlist to use these documents. But until that
20 point, these are in direct violation of motion in limine
21 No. 1.

22 THE COURT: So the exhibits that you're objecting to
23 now are the ones that are in the bucket that you've described
24 as Proffer 1?

25 MR. REGER: Yes, Your Honor. That was a bucket

1 created by Netlist when they filed a proffer. That's right,
2 Your Honor.

3 THE COURT: All right.

4 MR. REGER: And would you like me to read the
5 exhibits at issue into the record, Your Honor?

6 THE COURT: I don't know -- have you filed the
7 bucket list? Is it in the record? If not, we should probably
8 read it in.

9 MR. REGER: Your Honor, I believe both parties
10 emailed that bucket list, but I don't believe we've actually
11 filed anything.

12 THE COURT: All right. Then I'll note that my
13 understanding of this bucket is Plaintiff's Exhibits 583, 632,
14 1662, 1673, 1779, 585, and 1787.

15 Does that correspond with your understanding, Mr. Reger?

16 MR. REGER: I believe that's right, Your Honor.

17 MR. SHEASBY: Your Honor, I think it was 583, not
18 585.

19 THE COURT: All right. 585 is in a parenthetical,
20 suggesting that perhaps it's attached to the one before. I
21 don't know.

22 Mr. Reger, do you have your bucket list?

23 MR. REGER: I do. Your Honor. May I --

24 THE COURT: Yes.

25 MR. REGER: Your Honor, I understand the confusion.

1 My apologies. So 585 is an attachment to an email that is
2 subject to this proffer.

3 THE COURT: So the --

4 MR. REGER: So it will be considered as part of it,
5 Your Honor.

6 THE COURT: The email is 1779 and the attachment is
7 585?

8 MR. REGER: Yes, sir.

9 THE COURT: All right. Then do you want to rest at
10 this point and have me hear from the Plaintiff, or do you have
11 something further to offer?

12 MR. REGER: Your Honor, I was going to walk through
13 the exhibits and explain how the proffer is suggesting that
14 these are part of the exception under Motion in Limine No. 2
15 that the Court granted with respect to Mr. Kennedy and,
16 instead, what I was going to show Your Honor is that these are
17 actually prohibited under Motion in Limine No. 1. If Your
18 Honor would like, I can walk through one by one.

19 THE COURT: I think I understand the difference
20 between the two MILs, and so maybe at this point I'll see if
21 Mr. Sheasby can explain how he thinks they fit within it and
22 then I'll let you respond to that.

23 MR. REGER: Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Reger.

25 MR. SHEASBY: Can we switch slides, please?

1 May it please the Court.

2 There are two motions in limine granted in part. The
3 first one was granted as to improper argument and evidence
4 regarding breach of the supply obligation, which says nothing
5 because Judge Gilstrap didn't decide what was improper or
6 proper; he simply said that he and the Court needed to be a
7 gatekeeper as to the exhibits and a proffer needed to be made,
8 which is exactly what was done.

9 The second motion in limine was denied as to
10 Mr. Kennedy's discussion of the importance of the supply
11 obligation. Each of the agreements -- each of the documents
12 in this bucket are expressly discussed by Mr. Kennedy in the
13 unstricken portions of his report.

14 But I want to take a step back. This is JTX 0029,
15 which is in evidence indisputably, and upon termination of the
16 agreement, any licenses and rights that the party has -- that
17 Samsung had to use our patents was terminated and it expired.
18 This is directly on point with cases such as *Mentor Graphics*,
19 851 F.3d 1275, in which the termination of the license
20 agreement and the warnings about what would happen if the
21 license agreement was terminated was direct evidence of
22 willful infringement. And, in fact, the Federal Circuit
23 reversed the district court who did not allow the fact that a
24 pre-existing license was breached to be used as evidence of
25 willfulness.

1 THE COURT: You know, nobody's talking here about
2 not allowing the Plaintiff to show that a license was
3 terminated.

4 MR. SHEASBY: That's correct. So the question is --
5 we agree that the -- one can show that the license is
6 terminated. The next question is can we show that the license
7 was terminated because of failure of the supply clause.
8 Mr. Kennedy speaks about the fact that the supply clause is an
9 essential element of the consideration for the agreement, and
10 each of the exhibits that he discusses go directly to the
11 issue of the value of supply.

12 If we can have PX 583.

13 This is the material breach letter. This says in very
14 clear and plain language that the reason for the termination
15 is because of failure of the supply obligation. To exclude
16 this would be no different than *Mentor Graphics*. In *Mentor*
17 *Graphics*, the license was lost because EVE was acquired by
18 Synopsys. The acquisition of EVE by Synopsys, they were
19 warned that if that occurred they would lose any rights and
20 be exposed to patent infringement. This letter does exactly
21 that--it warns Samsung that if it doesn't change its behavior,
22 if it doesn't stop -- if it doesn't stop its breach and supply
23 product, it will lose its license.

24 And so there's nothing improper or inflammatory about
25 this; it's the basic issue in this case for two reasons. One,

1 it shows the behavior of willfulness, just as it did in *Mentor*
2 *Graphics*; and two, it goes directly to what was the value of
3 this agreement, which is a hotly disputed issue. For us, and
4 Mr. Kennedy speaks to this, the value of the pre-existing
5 agreement was the supply obligation.

6 This letter makes it more likely than not -- well, let me
7 put it this way. A juror could conclude based on this letter
8 that it was, in fact, the case that the supply obligation was
9 incredibly important to Netlist; so important that it gave up
10 all of its rights under the agreement in order to bring
11 Samsung to bear for failure to supply.

12 So the question is, is there anything improper or
13 inflammatory about this letter. It doesn't use colorful
14 language, it doesn't go over the top; it simply states facts,
15 facts that are now undisputed based on the Central District of
16 California decision, and tells Samsung if it doesn't change
17 its behavior there will be a breach.

18 THE COURT: If you introduce evidence of the finding
19 of the California litigation, why shouldn't Samsung be allowed
20 to introduce the verdict?

21 MR. SHEASBY: We are not going to introduce any
22 evidence of the finding of the litigation, Your Honor.

23 THE COURT: But what you're suggesting is that the
24 California court verdict established Netlist's breach claim on
25 that.

1 MR. SHEASBY: That's exactly what we're not trying
2 to do. In other words, we make no reference to the Central
3 District of California. We want none of that to come in. The
4 only thing we want to be in the record is that there was a
5 notice of material breach and there was an effective
6 termination, full stop. The --

7 THE COURT: Explain to me why the notice of breach
8 is relevant to the value of the supply agreement.

9 MR. SHEASBY: So we speak about the fact that the
10 failure to supply NAND and DRAM was a central element of the
11 agreement for us, and the fact that we were prepared to
12 terminate the agreement based on the fact that it's a central
13 element of the -- the fact that we were able to terminate the
14 agreement shows that it was a central element of the benefit
15 of the bargain for us.

16 Now, to be clear, the jury verdict -- there were two
17 decisions in the Central District of California, Your Honor.
18 One was a finding of material breach and termination on
19 summary judgment coupled with a finding that we were not
20 allowed to seek consequential damages in front of the jury.
21 There was a jury verdict solely on cover damages.

22 We will not dispute and, in fact, our witnesses will
23 admit on direct and on cross examination that we were able to
24 cover all of our supply, that we had no cover damages from
25 doing this, nor are we going to talk about any consequential

1 damages based on this behavior. This is solely to show two
2 things--one, that the supply agreement was, in fact, a central
3 element of the benefit of the bargain, as evidenced by the
4 contemporary correspondence; and two, under *Mentor Graphics*
5 *versus EVE*, showing that Samsung was given warning that would
6 lose its rights to our patents, it chose to go in a particular
7 direction. That's the same direction that EVE and Synopsys
8 went inexplicably in *Mentor Graphics*, and the Federal Circuit
9 said that that was evidence of willfulness.

10 So I want to be very clear. If I utter or I speak or my
11 witness says, Oh, and we weren't able to recover or there's
12 damage to our business and we weren't able to recover, that
13 would be a sword and shield, but purely the fact that there
14 was a license, that we warned them if they didn't continue to
15 supply the license would be terminated, that they chose not to
16 continue to supply and the license was terminated, and that
17 Mr. Kennedy -- and it's a hotly disputed damages issue, that
18 these agreements -- that the supply clause was a central
19 element of the benefit of the bargain.

20 THE COURT: I believe that the thrust of this
21 evidence will be to show that Samsung breached the JDLA,
22 and that I think has a prejudicial effect that far exceeds
23 whatever probative value it might have in showing the value
24 of the supply agreement, so --

25 MR. SHEASBY: But how do you engage *Mentor Graphics*,

1 then?

2 THE COURT: I don't believe that the Federal Circuit
3 has laid down a rule that you're entitled, when you've already
4 litigated a breach of contract case in another court, to bring
5 the breach into this infringement action. And if you're
6 telling me that that's what *Mentor Graphics* says, I'll take a
7 break right now and go read it.

8 MR. SHEASBY: Yes, Your Honor. That's exactly what
9 *Mentor Graphics* says.

10 THE COURT: All right. We'll take a break.

11 (Brief recess.)

12 THE COURT: Thank you. Please be seated.

13 Mr. Sheasby, I have the *Mentor Graphics* opinion in front
14 of me. Please cite me to the part of it that you maintain
15 contains the rule you cited.

16 MR. SHEASBY: Yes, Your Honor. It is in two pieces.
17 If you go to page 1281.

18 THE COURT: All right.

19 MR. SHEASBY: EVE and Mentor entered into a license
20 agreement. The license agreement contained a clause that says
21 it would terminate if EVE was acquired.

22 THE COURT: That was an agreement based on the
23 settlement of an infringement action against EVE?

24 MR. SHEASBY: That's correct, Your Honor.

25 THE COURT: All right.

1 MR. SHEASBY: Then Mentor learned that Synopsys was
2 in negotiations to acquire EVE. Mentor's CEO warned -- sorry.
3 Mentor's CEO warned Synopsys that if the acquisition went
4 through, EVE would lose its license. That's also in 1281.

5 I should note for the record that in this case there is
6 testimony that the JDLA was entered into by Samsung --

7 THE COURT: Mr. Sheasby, just show me where the
8 Federal Circuit said it would be error to exclude the basis
9 for a --

10 MR. SHEASBY: Yes, Your Honor.

11 THE COURT: -- finding that was litigated in another
12 court.

13 MR. SHEASBY: So this was 1295. So at 1295, Mentor
14 did not dispute -- Synopsys did not dispute that the license
15 was terminated. It was legally terminated. The district
16 court said that, quote, "Mentor relies on Synopsys'
17 acquisition of amendment which terminated the license and
18 rendered all subsequent sales infringing. These events
19 occurred after the declaratory judgment was filed but prior to
20 Mentor's counterclaim for infringement. The alleged acts of
21 infringement are, thus, pre-suit, and there is, accordingly,
22 no basis for excluding Mentor's evidence of willfulness."

23 So in that case the judge excluded Mentor from presenting
24 the evidence that Synopsys was warned --

25 THE COURT: You know, that is not right. The judge

1 excluded Mentor from producing any evidence of willfulness.

2 Right?

3 MR. SHEASBY: The judge did not allow willfulness to
4 go to the jury.

5 THE COURT: That's right. And that's what got
6 reversed.

7 MR. SHEASBY: Yes, based on Mentor's proffer that
8 its evidence of willfulness was the warning that the license
9 would terminate if the agreement --

10 THE COURT: And where does the Federal Circuit say
11 that was the basis of their ruling?

12 MR. SHEASBY: Well, that's the only evidence that
13 was presented by Mentor for willfulness in the brief -- in the
14 opinion.

15 THE COURT: All right. I'm still looking for where
16 the Federal Circuit announced the rule you laid down.

17 MR. SHEASBY: Your Honor, that's as close as I can
18 get to our facts.

19 THE COURT: That's not close enough.

20 MR. SHEASBY: I understand, Your Honor.

21 THE COURT: Don't cite me a case and tell me that
22 the Federal Circuit made a holding that you can't show.

23 MR. SHEASBY: I understand, Your Honor.

24 THE COURT: All right.

25 MR. SHEASBY: Your Honor, there are two exhibits

1 that are outside of the -- of that holding that I'd like to
2 show you in bucket 1.

3 THE COURT: All right.

4 MR. SHEASBY: This is 1662.

5 THE COURT: 1662. All right.

6 MR. SHEASBY: 1662 has nothing to do with the breach
7 or termination. It is a document that discusses the internal
8 valuation of Netlist's patents by Samsung.

9 If we scroll down to page 2.

10 If we look at the bottom, "During dinner with EVP Jibum
11 Kim of Company N"--that's Netlist--"he expressed an opinion
12 that company N's patents is applicable to RDIMM HBM"--those
13 are the two -- two of the three categories of products that
14 are accused of infringement--"as is LRDIMM. And so we plan to
15 obtain relevant information and review it."

16 So that has nothing to do with the termination or the
17 supply agreement; it's purely relating to their evaluation of
18 the value of our patents.

19 THE COURT: And is that the only part of 1662 that
20 you can show is relevant?

21 MR. SHEASBY: That's the only part I would seek to
22 offer.

23 THE COURT: All right. So you would have no problem
24 with redacting it down to that.

25 MR. SHEASBY: That's correct, Your Honor.

1 THE COURT: All right.

2 MR. SHEASBY: And then PX 1787. PX 1787, if we
3 scroll down. Scroll down more.

4 This is Samsung approaching us for an extension of our --
5 for additional access to our technology. It's -- this is the
6 email right here, and that they wanted access to our
7 technology relating to controllers and IP. And, once again,
8 this doesn't have to do with the supply obligation or the
9 breach of the supply obligation; it just shows -- it tends to
10 show that Netlist -- that Samsung viewed our technology as
11 continuously valuable because in 2017 they were asking for
12 additional technology.

13 There are some Samsung witnesses who testified that they
14 were dissatisfied with Samsung's technology -- with Netlist's
15 technology, and this would go to show that, in fact, Samsung
16 viewed Netlist technology as valuable.

17 THE COURT: And is the technology that is discussed
18 in 1787 a part of the patents-in-suit?

19 MR. SHEASBY: It is. Let me explain. So Samsung
20 hired us to work with them on an NVDIMM product. That NVDIMM
21 product had on-module power management. That was what they
22 wanted to integrate into their product. The on-module power
23 management that they were hoping to integrate into NVDIMM they
24 instead integrated into the DDR5 products. And the DDR5
25 products are what are at issue in this case. I can show you

1 the admissions that -- from their witnesses that there is a
2 connection between the NVDIMM.

3 THE COURT: Well, show me first where there's a
4 reference to that technology in 1787.

5 MR. SHEASBY: To on-module power management?

6 THE COURT: Yes.

7 MR. SHEASBY: It's not that specific, Your Honor.
8 It's purely talking about the extension of NVDIMM, the NVDIMM
9 relationship. And Samsung is saying that our technology --
10 the reason why they were -- they didn't -- they felt our
11 technology was not good, and this would tend to show that our
12 technology -- this would defend against that by showing our
13 technology was high quality because they were continuing to
14 seek a second phase with us.

15 THE COURT: And -- all right. So I'll need to hear
16 from them whether they intend to offer evidence to that
17 effect, but your contention is that if they do, 1787 would
18 tend to refute that.

19 MR. SHEASBY: Yes, Your Honor.

20 THE COURT: All right. Anything else in this
21 bucket, Mr. Sheasby?

22 MR. SHEASBY: No, Your Honor.

23 THE COURT: All right. Thank you.

24 MR. REGER: Mr. Colvin, can I have slide 9, please?

25 THE COURT: Go ahead, Mr. Reger.

1 MR. REGER: Thank you, Your Honor.

2 With respect to PX 1787, your Honor, Samsung will
3 withdraw its objections and focus this argument on the second
4 exhibit, Your Honor.

5 THE COURT: All right. Then 1787 will be
6 pre-admitted.

7 MR. REGER: So with respect to PX 1662, it is
8 important, Your Honor, to look at one of the rulings of this
9 Court just last week. There was a motion for summary judgment
10 of no willful infringement, and with respect to evidence as it
11 relates to anything that occurred before July 15, 2020, the
12 Court granted that motion. There is no evidence of willful
13 infringement prior to July 15, 2020.

14 There was one exception to that with respect to HBM
15 foundry products. None of the evidence, none of -- nowhere in
16 1662 are they talking about HBM foundry products. In fact,
17 Mr. Sheasby focused his argument on the onboard power
18 management. He said NVDIMM is onboard power management;
19 therefore, by implication we're talking about DDR5. DDR5 is a
20 completely different set of products than the HBM foundry that
21 was still considered -- that was still denied with respect to
22 the no willful infringement finding.

23 So this Court has already granted our willfulness motion
24 with respect to DDR5, willfulness prior to July 15, 2020,
25 because we were licensed.

1 Thank you, Your Honor.

2 THE COURT: So Mr. Reger --

3 MR. REGER: Yes, sir.

4 THE COURT: -- tie that to the portion of 1662 that
5 Mr. Sheasby is talking about.

6 MR. REGER: Yes.

7 If I could have slide 24, please.

8 So here, Your Honor, what Mr. Sheasby focused on was the
9 -- he was going to redact this down to just the bottom
10 screenshot, and what we are talking about here is RDIMM, HBM,
11 Enterprise SSD, and LRDIMM. As Mr. Sheasby focused on, the
12 NVDIMM talked about the DDR5 and onboard power management.
13 While this does reference HBM, this is not with respect to any
14 HBM foundry products, Your Honor.

15 THE COURT: And we know that how?

16 MR. REGER: Your Honor, there is no indication in
17 the record that Samsung offered foundry products at this time.

18 THE COURT: So what is -- I have heard the potential
19 relevance of this. What is -- what's the prejudice that
20 arises out of it that would offset that relevance?

21 MR. REGER: The prejudice, Your Honor, is that this
22 would suggest that Samsung had HBM foundry products on June
23 10th, 2016, when there's no evidence that this meeting related
24 to that. And just beyond that, Your Honor, there's no
25 evidence that Mr. Kennedy with respect to his damages

1 valuations refer to this. And that is one of the key
2 indications that -- one of the key things that Netlist relies
3 on to get this entered.

4 If I may -- Your Honor, if I may take a step back. The
5 original purpose of this exhibit, according to Netlist, was to
6 present it to suggest that Samsung was trying to drive Netlist
7 into bankruptcy and trying to acquire the patents through that
8 bankruptcy. This Court last week indicated that he was not
9 going to allow that to proceed. And I believe that this is
10 just a further way to back door that evidence, Your Honor.

11 THE COURT: What about that particular passage
12 suggests in any way a plot to drive Netlist into bankruptcy?

13 MR. REGER: Your Honor, to be honest, it doesn't.
14 All I can do is go off what Netlist tells me, Your Honor. In
15 their proffer to the Court, Netlist suggested that they were
16 going to rely on this document for that purpose. That's all I
17 can go off of, Your Honor.

18 And I -- well, with respect -- I understand that maybe
19 their primary goal was to get the top half in there and --
20 with respect to the collateral rights, and they have now
21 withdrawn that argument, but that was their indication for the
22 use of this document.

23 THE COURT: I'm not really focused on what their
24 motivation might be; I'm just trying to determine the
25 relevance of the statement, and it does tend to indicate a

1 value of that technology.

2 MR. REGER: I understand, Your Honor.

3 THE COURT: I will pre-admit 1662 as redacted down
4 to that final bullet point.

5 MR. REGER: Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Reger.

7 Otherwise, the exhibits in this bucket are excluded in
8 the sense that they will not be pre-admitted.

9 That takes us to No. 2.

10 MR. COLVIN: Good afternoon, Your Honor. Matt
11 Colvin for Samsung.

12 Your Honor, we have two exhibits in this Bucket No. 2.
13 These are exhibits PX 1663 and PX 1756. Both of these relate
14 to the proffer that Netlist provided that's at Docket No. 429.

15 Your Honor, last week during the pretrial conference this
16 Court granted Samsung's MIL No. 3 that excludes reference to
17 the Korean tax tribunal opinion, and what we believe that
18 Netlist is trying to do with these two documents is to
19 introduce or back door documents that are related to that
20 Korean tax tribunal issue, Your Honor.

21 So of these two documents, there are a number of
22 problems. The first is authenticity. With respect to 1756,
23 these documents do not show any Samsung witness, no one has
24 authenticated these documents, samsung did not produce them.
25 And we believe that -- let's see.

1 So if we look at 1756, you'll see that the email is from
2 a Michael Kim at PWC. Now, there's been some notice by
3 Netlist that that was perhaps a consultant for Samsung, but
4 that's not. PWC was a consultant for Netlist. And certainly
5 there's no indication on the record that Michael Kim at PWC is
6 a Samsung employee.

7 THE COURT: Mr. Colvin, let me hear the response to
8 the problem with MIL 3 first, and if we get past that then
9 we'll get into the other evidentiary objections.

10 MR. COLVIN: Yes, Your Honor.

11 THE COURT: Thank you.

12 MR. SHEASBY: Your Honor, this document has nothing
13 to do with MIL No. 3. This was not the Korean tax tribunal
14 proceeding at all. There is -- this is a questionnaire that
15 Samsung filled out and sent in to the -- basically the Korean
16 equivalent of the IRS. After the IRS's ruling, then we
17 appealed. There was a decision by something called the Korean
18 tax tribunal. That was a procedure that was later in time.
19 That procedure is out.

20 These documents are simply exchanges between Netlist and
21 Samsung discussing questionnaires that they are providing to
22 the Korean equivalent of the IRS. They have nothing to do
23 with the ruling of the Korean tax tribunal, which was the
24 basis of whether a payment was a royalty or not. And these
25 documents, instead, relate directly to notice of the value of

1 the patents.

2 If I can show you that, Your Honor?

3 Milton slide 40. So PDX 2.

4 This is Samsung forwarding the document directly to us.

5 "We concluded that the patents related to memory modules RDIMM
6 and LRDIMM are going to have value in the future." This is
7 purely relating to the value of the patent. I don't think any
8 of these documents relate to the Korean tax tribunal dispute
9 about whether something was a royalty or an NRE, but if there
10 is anything like that, we are redacting them. This is purely,
11 purely, purely for the purpose of discussing that Netlist --
12 that Samsung viewed the patents as valuable on a going-forward
13 basis. At the time the agreement was entered into and in
14 2019, the HBM patents had already issued and the applications
15 for the other patents families were pending.

16 If you go to slide 41. 42.

17 This is another example, just praising our proprietary
18 know-how as being a value to Samsung.

19 Slide 63.

20 LRDIMM is accused of infringement in this case, and they
21 talk about us as the company that created LRDIMM technology.
22 And they talk about the fact that they wanted our patents to
23 resolve a patent infringement risk.

24 So I want to be very clear. I'm behind the eight ball
25 with this Court based on my hyperaggressive reading of *Mentor*,

1 but this is not that issue. I am not trying to skirt around
2 the Korean tax tribunal ruling. This has nothing to do with
3 the Korean tax tribunal, this has nothing to do with the
4 finding of royalty versus NRE; this is -- purely, purely,
5 purely goes to show that the patents have value.

6 THE COURT: Have you addressed the redaction of the
7 agreements to remove references to the Korean tax service?

8 MR. SHEASBY: There is no reference to the Korean
9 tax service except in the email itself, and we will redact
10 that from the email, Your Honor. So the document attachment
11 has no reference to the Korean tax service in it. It's just a
12 plain white document with Q&As. And I can show, if you go to
13 715, Mr. -- PTX 715. I'm sorry. PTX 1756.

14 Yeah. So it says Dongsuwon Tax Office, and we will --
15 if Your Honor would like, we can remove the reference to the
16 tax office. But that is not the tax tribunal; that's
17 literally an IRS questionnaire they're filling out.

18 THE COURT: I guess I'm going to hear about this
19 from Samsung, but this doesn't appear to be from Samsung.

20 MR. SHEASBY: Scroll down.

21 It actually is from Samsung. So Samsung sent it to
22 Netlist's accountant and then Netlist received it from its
23 accountant. So we have someone who can testify to that. We
24 also examined Indong Kim, who was the Samsung representative
25 about both these documents, he authenticates them and he would

1 -- he is -- he can be a sponsoring witness from them.

2 So the document came from Samsung. It didn't come from
3 PWC. We're not saying that PWC authored it or PWC represented
4 Samsung. This is clear evidence that Samsung drafted this.

5 And, in fact, we can go deeper than that, Your Honor. If
6 you look at the -- we actually have the evidence, internal
7 evidence showing the author of the document reaching out to
8 the engineers and asking them to fill out the document. I can
9 show you that email, Your Honor, to establish the authenticity
10 and the fact that they were acting within their authority as
11 Samsung employees, if Your Honor would like.

12 Yes. Indong Kim and Jung Bae Lee both testified
13 regarding the document. And if you look at Exhibit 9 to
14 docket to our proffer on 1663 and 15 -- 1756, Your Honor. So
15 this is not the document we are seeking to admit into
16 evidence, but this is the author of the -- the sender to us
17 asking the engineers to fill in information for the Korean tax
18 office.

19 So we're not going to put this document into evidence;
20 it's purely to show these were done -- this was not some yahoo
21 who's writing stuff up; the actual engineers were doing it.

22 If we pull that down.

23 And I can read from the testimony of Indong Kim and
24 J.B. Lee who both authenticated these documents and testified
25 that they were involved in their -- that Indong Kim testified

1 he was involved in their creation.

2 THE COURT: All right. You don't need to read
3 further at this time.

4 Let me hear the response.

5 MR. SHEASBY: I did also want to flag one other
6 thing because I think there was some accusation. Willfulness
7 only begins from the period of time of when the agreement was
8 terminated. That is absolutely the case. But just like in
9 *WCM Industries* in which knowledge of a pending patent
10 application, knowledge before the period of time in which
11 there could be infringement is relevant to willfulness, the
12 same way here. Pre-termination, if they were aware that the
13 patents were covering their product such that post-termination
14 they would be infringing, they would be relevant.

15 Thank you, Your Honor.

16 THE COURT: All right. Thank you, Mr. Sheasby.

17 MR. COLVIN: If I could have my slides, ma'am.
18 Thank you.

19 Your Honor, there's still a significant authentication
20 problem here. So Mr. Sheasby referenced the deposition
21 testimony of Indong Kim. I've got some of this on the screen
22 here for you, Your Honor.

23 First we'll start at the top left. "You were involved in
24 providing information to the Korean government regarding a tax
25 treatment dispute between Netlist and Samsung. Correct?"

1 He says, "No."

2 And if you look at what's -- the other documents -- the
3 other things that are highlighted here, he's simply saying, I
4 don't know what's going on here.

5 If you look in the top right --

6 THE COURT: Well, didn't he or someone with a
7 similar name from Samsung author the email that forwarded
8 the exhibit as a Samsung document?

9 MR. COLVIN: Your Honor, if you'd give me just a
10 moment to pull that document.

11 THE COURT: We're talking about the first email in
12 the 1756 chain.

13 MR. COLVIN: If I could have the document camera,
14 please.

15 So this is 1756, Your Honor.

16 THE COURT: Yeah.

17 MR. COLVIN: And what we see here is -- this is not
18 Indong Kim anywhere on this email, Your Honor. None of these
19 Samsung employees were ever deposed, they were never asked to
20 be deposed, they don't have testimony in this case. Now, they
21 could have tried to take their testimony, but they didn't.

22 THE COURT: Well, authentication simply requires
23 evidence that something is more likely than not what it
24 purports to be. Is there any doubt that that email is an
25 authentic Samsung email?

1 MR. COLVIN: Your Honor, I don't dispute that the
2 bottom part of that is an authentic Samsung email, but the
3 fact is there's no authentication for the document as a whole.
4 And they're also using this as a vehicle for the attachment,
5 and there's just no authentication of that either, Your Honor.

6 THE COURT: Doesn't the email from the Samsung
7 employee forward the attachment and say that this is Samsung's
8 answer?

9 MR. COLVIN: Your Honor, it says, I'm sending you
10 our company's response to the questions from the tax office.
11 And there's no -- it says it's sending the company's response,
12 but there's no indication down here that something is being
13 forwarded. And if you look over on the back of this page,
14 there's nothing there, Your Honor.

15 THE COURT: Oh.

16 MR. COLVIN: And so we had this attachment from
17 Michael Kim at PWC, and it is an attachment. We see the
18 attachment here, but that doesn't show up on this document
19 from Samsung.

20 And so while there may be some indications on this
21 document that, you know, some people were -- at Samsung were
22 involved in sending something to PWC, we actually don't know.
23 They can't draw the evidentiary line between this.

24 Now, they could have taken the time in discovery to try
25 to prove this up and get testimony from these people, but that

1 hasn't happened. And when you look at the deposition
2 testimony from Indong Kim, and I can show you others from Jung
3 Bae Lee that was also mentioned, they actually can't make the
4 evidentiary leap that's required to authenticate the document,
5 Your Honor.

6 THE COURT: All right. I didn't follow the
7 particular chain there very well, so I'll hear more about that
8 one.

9 Tell me about 1663 and the attachment to it.

10 MR. COLVIN: So for 1663, Your Honor, a few points,
11 if I can continue to scroll here.

12 So with 1663, there are a number of issues. This does
13 come from a Samsung employee. That Samsung employee, Byung
14 Jeon, was never deposed. There's no testimony in this case
15 from that person. The body of the email is important. It
16 says, "The attached file of the materials we plan to submit."
17 It never says that these are emails that we submitted--excuse
18 me--that these were materials that were actually submitted to
19 the office and, in fact, Netlist responds back to Samsung and
20 says, Your letter is factually incorrect, and so Netlist can't
21 consent for Samsung to submit this letter. And so we know
22 that there's something incorrect in this letter that was
23 attached to 1663. We don't know what it is because there was
24 no testimony about it, Your Honor.

25 THE COURT: Well, the whole theory of admissions is

1 that they're statements that you made, so you can explain any
2 errors in them. Why isn't this the same way? This is
3 something Samsung said. If it's otherwise relevant, it's
4 up to Samsung to show why it was made.

5 MR. COLVIN: Your Honor, we think that all of these
6 documents together are documents that were being sent to this
7 tax office.

8 Now, Mr. Sheasby -- I don't mean to side-step your
9 question, Your Honor; I'm just taking the long way there.
10 All of these documents -- and the issues in front of that tax
11 office were the genesis of the Korean tax authority dispute.
12 And so when you take the fact that we can't really explain the
13 full story behind these documents because they are related to
14 the Korean tax authority, directly related to the Korean tax
15 authority issue, when you take that combined with very
16 questionable -- I should say no full authenticity chain for
17 1756, and 1663 having some -- something about it being
18 factually incorrect, we just don't know what, I think when you
19 take all of that together, there is a lot of prejudice around
20 these documents, because we can't fully explain the story
21 without really telling the Korean tax authority.

22 THE COURT: What does the attachment to 1663 say?
23 That is, after all, what the Plaintiff is trying to admit.
24 I think that's Exhibit 1664.

25 MR. COLVIN: Your Honor, so 1663 -- I actually don't

1 have the full document on my slides, but it was part of what
2 Mr. Sheasby was showing you earlier. So this is 1663. This
3 is the email that we were just looking at. Well -- and then
4 1663 has sort of a question and answer, question and response
5 from Samsung. And this is what was planned to submit to the
6 Korean tax authority, but then Netlist said there's a problem.
7 And we don't actually know if this was submitted, we don't
8 know if this was thrown in the trash, we don't know if it was
9 edited, we don't know how it was edited. That's just not in
10 the record, Your Honor.

11 THE COURT: I understand. I'm just trying to
12 determine the admissibility of it.

13 Now, let me ask Mr. Sheasby to indicate what part of that
14 attachment it is arguing the relevance of.

15 MR. SHEASBY: Yes, Your Honor.

16 If we can have Milton slide 40. PDX 2, slide 40.

17 So it occurs multiple times in the questionnaire, but the
18 part -- the portion we think is relevant is the portion that
19 talks about the fact that they wanted to enter into the
20 license agreement because they were concerned about the --
21 and wanted to use our patents presently and are on a
22 going-forward basis. So it's these documents, these pages
23 that -- these discussion of our technology and the need for
24 our patents that we wanted to have that we think is relevant.

25 THE COURT: There are numbered questions and

1 answers, so what questions and answers by number is it that
2 you're seeking to use?

3 MR. SHEASBY: Sure. On 17 -- on 715, it's Question
4 and Answer 1. And it's the question that begins, "Can you
5 tell us why Samsung Electronics signed the joint development
6 license agreement?" I don't know the number, but I'll find
7 it, but those are the two questions. And 1664, it's Question
8 No. 1 and Answer No. 1.

9 And if we can go to slide 63.

10 It's 715. It's question 1 again, and -- yes, Question
11 No. 1 again. And I can go through at the break, and I think
12 there are a couple of more instances of it, Your Honor, where
13 it talks about needing our patents. But it's solely the
14 passages that talk about needing our patents, and then this
15 patent talks about what company created the LRDIMM technology.

16 THE COURT: So the relevance of this statement at
17 the time it was made, which was -- what's the date of that
18 email?

19 MR. SHEASBY: 2019, Your Honor.

20 THE COURT: All right. So what is the relevance
21 that in 2019 they're explaining why they entered the JDLA?

22 MR. SHEASBY: Sure, Your Honor.

23 So in 2015 an agreement was entered into, the HBM patents
24 which are load reduction patents as well, had already issued,
25 and the other patents were pending applications. And so just

1 as in WCM, they are telling the Korean government that they
2 entered into --

3 Go back to slide 40.

4 They're telling the Korean government that we entered
5 into the agreement because in the future on a going-forward
6 basis we are concerned about patent infringement risks
7 relating to the patents. And that would go to show, although
8 it's not dispositive evidence, but it would tend to suggest to
9 a jury that Samsung knew it needed our intellectual property
10 and, therefore, that after the agreement terminated, its
11 continued behavior was willful.

12 THE COURT: All right.

13 MR. SHEASBY: These are the products that are
14 accused of infringement in the case, the RDIMM and LRDIMM.

15 THE COURT: And so is there any reason that you need
16 the reference to why this document was prepared?

17 MR. SHEASBY: None at all.

18 THE COURT: All right. And do you have any answer
19 to the argument that as to the 1756 email from
20 PriceWaterhouseCoopers that there is no showing that the
21 attachment of that is authentic and comes from Samsung?

22 MR. SHEASBY: Sure. I have two responses.

23 If we can go to 1756.

24 So I am sending you our company's responses. This was
25 a forward. And so they're -- you see how it says 'forward'.

1 Scroll down.

2 See how it says 'forward', Your Honor? It's forwarding
3 an attachment that says "related questions from the Dongsuwon
4 tax office." That was in Korean in the same font as used for
5 all their documents.

6 And if you scroll --

7 We translated it into English.

8 If you scroll down.

9 It says, "I'm sending you the company's response to the
10 questions from the Dongsuwon tax office." So the attachment
11 relates directly to what the subject matter is of the
12 forwarded message of the message from Samsung.

13 Secondly, we asked Indong Kim about this document, and he
14 testified that it was, in fact, Samsung telling the tax office
15 a question examining this exact issue.

16 THE COURT: Show me the part from his deposition
17 that you would say authenticated that.

18 MR. SHEASBY: So if you go to 60 through 61, it's
19 Indong Kim, page 61, lines 2 through 5, the Indong Kim
20 deposition.

21 So he was asked about the document. So he's been shown
22 the file --

23 Scroll down.

24 He said the document doesn't define, and this is the
25 critical passage on the next page.

1 "And Samsung is telling the government that's what
2 Netlist created?"

3 Answer: "That's what it says."

4 And so this is him having examined the document. He was
5 actually the 30(b)(6) witness on the JDIA relationship. He
6 was not just an individual fact relationship. So when you --
7 when you combine his fact that he acknowledged what the
8 document said coupled with the fact that there was -- it was a
9 forwarded email that had an attachment, we also have people
10 with personal knowledge at Samsung -- at Netlist who have
11 testified and will testify that this is the attachment they
12 received from Samsung.

13 THE COURT: And so tell me how you can show what
14 document the witness was being shown there.

15 MR. SHEASBY: Scroll up. Scroll up.

16 Exhibit 23 is the document that we're debating right now.

17 THE COURT: And maybe it's not disputed, but I don't
18 have any way to know that Exhibit 23 is the same thing as
19 PX 1756 or 715.

20 MR. SHEASBY: I can show -- if we'll put it on the
21 elmo, Your Honor.

22 THE COURT: All right.

23 MR. SHEASBY: This is Exhibit 23 to the Indong Kim
24 deposition, and it's verbatim to the 1773 [sic].

25 THE COURT: All right. Thank you, Mr. Sheasby.

1 MR. COLVIN: May I respond, Your Honor?

2 THE COURT: Yes, sir.

3 MR. COLVIN: Your Honor, just a few things to follow
4 up on that.

5 The deposition testimony that you were just shown, it
6 doesn't authenticate the document. He's being shown the
7 document and asked if the document says something, and he just
8 says -- you know, he's basically reading the document. He's
9 not authenticating it as though he has some personal knowledge
10 about the document; he's just responding to the document as
11 it's put in front of him.

12 And a few points other there. So you just heard that
13 when Mr. Sheasby showed you the portions of the document that
14 they were going to use and what they wanted to use them for,
15 that they're using them to try and say that the document is a
16 true and accurate representation of what Samsung believed,
17 but -- and what the parties had agreed, but Samsung said in an
18 email in response to receiving that document that it's
19 factually incorrect.

20 THE COURT: Netlist said that. Right.

21 MR. COLVIN: Netlist said that, Your Honor. Netlist
22 said the document is factually correct. We don't know about
23 what. We don't know how this document was changed or edited
24 before it was submitted or if it was ever submitted.

25 THE COURT: I don't -- it's not -- it doesn't matter

1 whether it was submitted; what matters is that Samsung said
2 it. And I agree with you that authentication is important,
3 but, you know, if you look at 901, all authentication takes is
4 evidence sufficient to support a finding that the item is what
5 the proponent claims it is.

6 I understand with you that you can create doubt about it,
7 but I certainly think that the fact that it is attached to
8 those emails, that it was shown to your 30(b)(6)
9 representative, and that no statement was made about it
10 not being what it purports to be, I think that's enough to
11 authenticate it.

12 Now, is there -- are there parts of that that you think
13 it is important to exclude? Certainly there's no reason there
14 has to be any reference to the Korean tax authority in the
15 process.

16 MR. COLVIN: Your Honor, without having sort of the
17 time to go through the document line by line with the idea of
18 what's important to exclude and what's important to keep out,
19 there may be an exercise we can take up on the break with
20 Mr. Sheasby, but sitting here right now in this moment I
21 can't.

22 THE COURT: Well, if Samsung wants the rest of it
23 redacted, the only part that I've been shown that appears to
24 be -- have a relevance that's claimed is the Question 1 of
25 each of the two and the answer thereto, and if you want the

1 rest of it redacted, so ordered. If there's a part of the
2 rest of it that you think is important to show context, that's
3 up to you.

4 MR. COLVIN: Understood, Your Honor.

5 THE COURT: All right. Well, I will pre-admit 1663
6 and 1756 and their attachments, subject to redaction. If
7 there's a dispute about the redaction, we'll set a time to get
8 back to that.

9 MR. SHEASBY: And, Your Honor, just one
10 clarification. I did -- I said I didn't know the question
11 number. It was Question No. 2 that I was reading from without
12 showing it to you.

13 THE COURT: Instead of Question 1?

14 MR. SHEASBY: Question 1 and 2. I showed both
15 Question 1 and 2.

16 THE COURT: 1 and 2 of which exhibit?

17 MR. SHEASBY: Of PX 1775, Your Honor. Sorry.
18 17 -- I'm all over the place. That was Question 2 of 715. So
19 Question 1 and 2 of 715.

20 THE COURT: Okay. And 715, for the record, is the
21 attachment to 1756.

22 MR. SHEASBY: Yes. And if you give me one moment,
23 I'll look at 1663 to see if I didn't miss anything. It's
24 Question No. 1 in 1663 and it's also Question No. 4. And I
25 can show you Question No. 4.

1 THE COURT: It looks like 4 has subparts. Which
2 one --

3 MR. SHEASBY: 4-1.

4 THE COURT: Question 4, subpart 1.

5 MR. SHEASBY: Thank you, Your Honor.

6 THE COURT: All right. That takes us to the next
7 bucket.

8 MS. REARDON: Good afternoon, Your Honor. Katherine
9 Reardon for Samsung.

10 May I proceed?

11 THE COURT: Yes.

12 MS. REARDON: Your Honor, the third proffer, Docket
13 No. 430, relates to evidence that Netlist used to intend to
14 show willfulness of the asserted patents. And at the time of
15 the proffer there were six patents-in-suit, now there are
16 five, and that's the '918 and '054 Patents that are asserted
17 against Samsung's DDR5 products, the '339 Patent, the '506
18 Patent has now been dropped, asserted against DDR4, and the
19 '060 and '160 are asserted against Samsung's HBM products.

20 Now, at the pretrial conference with Judge Gilstrap, the
21 Court found that Samsung was licensed for all of these
22 products up until July 15th, 2020, when the license agreement
23 terminated with one narrow exception, and that is HBM foundry
24 products. And so the Court said if Netlist could identify an
25 HBM product that's a foundry product, that would not be

1 covered by the JDLA, and this would be a fact issue for the
2 jury.

3 So we're going to -- there are a number of documents in
4 Proffer No. 3 that we can walk through, but at a high level,
5 the only patent that is actually identified in any of these
6 documents is the '060 Patent, which is accused against
7 Samsung's HBM products. But in none of those '060
8 documents--and I can pull one up--does it say anything about
9 foundry products.

10 THE COURT: Why would it matter whether the
11 documents call out foundry products?

12 MS. REARDON: Thank you, Your Honor.

13 We think this is prejudicial because it would allow the
14 jury to infer that any HBM -- any old HBM product could be a
15 foundry product, and that's simply not the case. Netlist has
16 not shown a single piece of evidence with any specificity that
17 says HBM is a foundry product. And so using this to show
18 pre-July 15th, 2020, knowledge would be prejudicial to Samsung
19 as it relates to the class of HBM products.

20 And I'll also raise, Your Honor, there is an issue
21 separate and apart from the '060 Patent as it relates to the
22 other DDR4 and DDR5 patents, and that is willfulness post-July
23 15th, 2020, which is a question for the jury. But Netlist is
24 using all of these documents to the extent they disclose
25 related patents--so, for example, the '831 Patent here and the

1 '833 Patent--to show evidence that Samsung had knowledge of
2 related patents and, therefore, Samsung must have willfully
3 infringed patents that issued far later in time as it relates
4 to DDR4 and DDR5.

5 THE COURT: Well, are you seeking some redaction of
6 the document?

7 MS. REARDON: We are not seeking redaction, Your
8 Honor. These are actually just to isolate some of the lines,
9 and Netlist has proposed these redactions as it relates to
10 other patents that are not related, not asserted patents in
11 this case.

12 THE COURT: I mean, basically what I'm hearing from
13 you is that while there is some relevance of the '060 to HBM
14 products, that you're afraid the jury will not understand the
15 limitations of the document.

16 MS. REARDON: That's exactly right, Your Honor.

17 THE COURT: That sounds like a question of advocacy
18 for the lawyers. Why can't you simply point that out to the
19 jury as opposed to not allowing the Plaintiff to have relevant
20 evidence?

21 MS. REARDON: Understood, Your Honor. And we can
22 certainly make -- we can certainly advocate that these are not
23 documents that have any indication about foundry, but, quite
24 frankly, Netlist has continued to blur the lines and simply
25 said that HBM products are foundry products. We, you know,

1 produced sales spreadsheets of thousands of different skews of
2 foundry products--of HBM products, excuse me; that's an
3 important correction to make in this case--and there is not
4 one line of that data that Netlist has pointed to and said
5 that is a foundry product in this case. Instead, they've
6 shown documents related to the fact that Samsung has a foundry
7 business; you know, nothing that relates to the specific skews
8 that are relevant accused HBM products here.

9 THE COURT: You did not move for summary judgment to
10 remove that issue from the case.

11 MS. REARDON: We did move for summary judgment, Your
12 Honor, of a finding of no willfulness and license as to those
13 products. They are the specific carve-outs in the license
14 agreement, and the Judge found that that would still be a fact
15 issue based on the fact that Samsung has a foundry business
16 generally, and that's the evidence that Netlist presented at
17 the pretrial conference.

18 THE COURT: So the claims, in other words, continue
19 in the case is what I'm hearing.

20 MS. REARDON: Whether or not the HBM -- a single HBM
21 product is a foundry product is a fact issue in this case,
22 yes.

23 THE COURT: All right. Well, I understand the
24 argument that there are a lot of HBM products that may not be
25 foundry products, but you're not in a position to say that

1 there are no foundry products that can be HBM products?

2 MS. REARDON: We're in a position to say that there
3 are no HBM products on the list in this case that are foundry
4 products, and I think we've said that in briefing previously.
5 It is Netlist who has just presented a presentation that we
6 have a foundry business and for --

7 THE COURT: I'm sorry. It was Netlist that what?

8 MS. REARDON: Netlist that has -- that presented
9 evidence at the pretrial conference that Samsung has a foundry
10 business generally.

11 THE COURT: Okay. And do you dispute that?

12 MS. REARDON: We certainly don't dispute that, but
13 that's not an issue that's relevant here because, again, none
14 of the list of products -- HBM products that we've produced in
15 this case, that are accused in this case, are foundry
16 products. They are Samsung-branded, Samsung-manufactured,
17 Samsung-sold products.

18 THE COURT: All right.

19 MS. REARDON: And, Your Honor, just, if I may, with
20 respect to the other patents, the '918, '054, and '339 Patent,
21 the evidence -- the several presentations that are in this
22 group here that Netlist points to, they only recite parent
23 patents or they recite things, if I may, Your Honor, like
24 general -- in this red box here--and apologies it's a little
25 bit hard to see--but general recitations of technology that

1 Netlist contends is covered by its patents. But this, for
2 example, was presented I believe back in 2014 to Samsung. The
3 patents I believe weren't filed for years after that. And so
4 really what they're referencing are, you know, patents --
5 priority patents or family patents from years prior to say
6 that Samsung had notice and willfully infringed the asserted
7 DDR4 and DDR5 patents in this case.

8 THE COURT: Again, this is -- you're concerned that
9 this document could be given broader effect than it should be?

10 MS. REARDON: That's exactly right, Your Honor. And
11 one thing I should point out is that in Netlist's proffer they
12 raise this theory of copying, that they intend to show that we
13 copied -- or that Netlist copied Samsung's -- or that Samsung
14 copied Netlist's inventions, and that's simply not the case.
15 It hasn't been an issue in the case. There's no evidence of a
16 culture of copying or anything of that nature. And it's also,
17 you know, using evidence and saying that it's copying evidence
18 is excluded by Court's MIL No. 3, so we think this is highly
19 prejudicial if it's going to be used for that purpose as well.

20 THE COURT: Well, the MIL already prevents them from
21 making that argument, doesn't it?

22 MS. REARDON: It does, Your Honor, but I wanted to
23 flag it because it is in Defendants' proffer -- or Netlist's
24 proffer 430.

25 THE COURT: You're saying that in 430 they refer to

1 these exhibits as evidence of copying?

2 MS. REARDON: That's exactly right, Your Honor.

3 THE COURT: Do you recall where?

4 MS. REARDON: If I may, Your Honor, just --

5 THE COURT: You may.

6 MS. REARDON: I'll give you the page number. Your
7 Honor, it's on both pages 1 and 2 about halfway down on each.

8 THE COURT: Help me out. I don't see a reference to
9 copying. Okay. I see -- under the 3A I see a mention of
10 copying.

11 MS. REARDON: If I could have the elmo.

12 Apologies, Your Honor. I'm pulling it up.

13 THE COURT: I see that reference on page 2.

14 MS. REARDON: Yes, on page 2, that knowledge of
15 Netlist's patents and pending applications can support finding
16 Samsung's copying effort and willfulness.

17 THE COURT: All right.

18 MS. REARDON: Thank you, Your Honor.

19 THE COURT: Thank you, Ms. Reardon.

20 MR. SHEASBY: Your Honor, we are not permitted to
21 make an argument of copying without leave of court. This is
22 part of our proffer. But whether copying is allowed or not,
23 the documents go to willfulness and knowledge of the patents.

24 Let me give you one example. This is PX 446.

25 So this was a document that was sent at the request of

1 Samsung as an example of patents and products that they cover.

2 And if you scroll to page 2.

3 It flags the '060 Patent, which was the patent at issue,
4 and then parents of the asserted patents which are also
5 pending at the time. And for the '060, for example, it listed
6 as targeting HBM.

7 And so this would be direct evidence that Samsung was
8 aware of the fact that we contended that our products -- our
9 patents covered HBM. Just as in *WCM Industries*, even if
10 Samsung was not unlicensed until termination, just as a
11 pending application was not infringement, that pre-issuance
12 knowledge -- or pre-infringement knowledge can go to
13 willfulness post-infringement.

14 But, more importantly, there is a factual dispute as to
15 whether HBM is licensed. So I think that -- putting aside
16 copying, I think this squarely does show knowledge of the
17 patent and what its covered and can go -- it doesn't prove it,
18 but a jury -- it could lead a jury to conclude that Samsung
19 did have knowledge that our HBM product -- that its HBM
20 product was covered by a patent and that upon termination it
21 would have to cease using that patent or face infringement.

22 THE COURT: So does this relate to the foundry
23 products issue?

24 MR. SHEASBY: It does. So HBM -- we believe that
25 all HBM products are foundry products at issue, Your Honor.

1 THE COURT: And is that something that your expert
2 has opined?

3 MR. SHEASBY: It's something that Samsung's fact
4 witnesses have opined on, Your Honor, but our expert also
5 opines on it. Doctor Brogioli has a second section discussing
6 the fact that HBM products are custom-made by Samsung for
7 nVidia, AMD, and other major customers. And he uses this
8 document in the unstricken portions of his report, as does Mr.
9 Kennedy and -- as does Mr. Kennedy.

10 THE COURT: All right.

11 MR. SHEASBY: And then I think the only other
12 document they showed that they wanted to argue about was
13 PX 464.

14 And if we scroll down, I think -- scroll.

15 The only page we need from this document is --

16 Keep scrolling. No, that's not the -- 621. Excuse me.

17 Scroll. Scroll. Right there. Go back. Blow that up.

18 Actually, keep scrolling. Sorry. That's the wrong one. Keep
19 scrolling. Let me see if I can go faster and find the page.

20 Actually let's do something. Let's go to deck 8 from the
21 pretrial conference. Slide 7.

22 So this is an example of the application of *WCM*. So this
23 was from 2014. It says earliest priority date June 2007.

24 That's the priority date of the '918 and '054 Patents that are
25 asserted in this case for on-module intelligent power

1 distribution.

2 So in 2014 before we entered the agreement we told them
3 that we had patents pending on on-module power distribution,
4 and that, in fact, is the patents that have been issued in
5 this case. This presentation relates to NVDIMM.

6 If you go to the next slide.

7 NVDIMM designs had power management integrated circuits
8 on-module, and so does DDR5, which is what they are now
9 selling. And so --

10 And if you go down to slide 10.

11 They talk about the fact that it would be helpful in
12 resolving the risk of RDIMM and LRDIMM, which are the -- RDIMM
13 are accused of infringing the '981 [sic] and '054 patents. So
14 I think both of these documents they presented to -- and I do
15 think these are fairly representative of the category -- well,
16 let me not say that actually. There may be a couple of others
17 that I should engage if they want to. But I think on these
18 two documents, they clearly, separate from copying, go to show
19 knowledge of the technology and willfulness, Your Honor.

20 And we know we can't use the word 'copying' without
21 permission. We think there's enough here to support it, but
22 that obviously is not our determination to make, but from the
23 copying --

24 THE COURT: The charts that showed the '060 Patent
25 and its relationship to HBM, those have certain parts blacked

1 out.

2 MR. SHEASBY: Yes.

3 THE COURT: Is that the way the exhibits will be?

4 MR. SHEASBY: Yes, Your Honor. I mean, we'll
5 probably make it prettier. We'll make it white, not black.
6 But the idea is not to have anything extraneous in front of
7 the jury.

8 THE COURT: All right. Thank you, Mr. Sheasby.

9 Ms. Reardon, it appears to me that Netlist has shown some
10 relevance on these documents. Do you have other objections to
11 their admissibility?

12 MS. REARDON: I do have other objections, Your
13 Honor, and I'm happy to entertain some of the other exhibits
14 as well that we haven't gone through. It was just for
15 brevity's sake trying to bunch some together. But if I may,
16 at Your Honor's discretion, respond to some of what counsel
17 just said.

18 THE COURT: Yes.

19 MS. REARDON: So counsel mentioned many times *WCM*
20 *Industries*, and in that case they didn't reach the question of
21 whether knowledge of the patents when they were pending as
22 patent applications was sufficient. You know, they said they
23 at least knew of the patents when they issued. And here we're
24 just talking about related patents many years before -- with
25 the exception of the '060 Patent, but many years before the

1 actual patents issued.

2 THE COURT: Well, this is -- he's arguing relevance.
3 The sufficiency of it to prove the knowledge necessary to
4 prevail on willfulness is a separate issue from whether or not
5 this makes it more likely or not.

6 MS. REARDON: Sure. And I think he said as well
7 that their experts on the foundry issue to make the '060
8 references in the chart that we saw relevant, that their
9 experts opined that all HBM products were foundry products.
10 And if you look at Doctor Brogioli's report, who is their
11 expert on the '060 and '160 Patent, there is not one mention
12 of the word 'foundry' if you search his report. Mr. Kennedy
13 is their damages expert, so he would have no technical basis
14 to understand or opine on whether or not an HBM product was a
15 foundry product.

16 THE COURT: Well, I think the question of whether it
17 is sufficient evidence is a question for another day, but I do
18 think that it is relevant evidence.

19 MS. REARDON: Understood, Your Honor.

20 THE COURT: Tell me about your other objections.

21 MS. REARDON: Does that mean, Your Honor, you're not
22 interested in hearing about the prejudice arguments?

23 THE COURT: Well, if you have -- I'm not interested
24 in an argument that just says the jury might misunderstand it.

25 MS. REARDON: Understood, Your Honor. And that is

1 one of our primary concerns given the lack of differentiation
2 between HBM generally and HBM foundry or foundry business,
3 which are two very different things.

4 THE COURT: I think that's something that a jury can
5 understand if it is explained to them.

6 MS. REARDON: Understood.

7 So if I could have the slides, please. I seem to be
8 having some trouble. If we could go back to 41.

9 So, Your Honor, with the exception of the '060 Patent
10 here, there are the references to the '831 Patent and the '833
11 Patent, and this goes to the issues related to the DDR4 and 5
12 patents that we were talking about earlier. And so these are
13 patents in the priority chain that are not asserted in this
14 case, and Netlist wants to use these references to show that
15 Samsung willfully, intentionally infringed the patents that
16 are asserted in this case, which came much later in time.

17 And those references are also -- well, let me stop there
18 as I move to 586. And we would ask, Your Honor, that those
19 related patents be -- to the -- the '833 and the '831 be
20 redacted as well, because the only willfulness issue, as you
21 contend is a live issue, is '060.

22 THE COURT: All right. I will inquire of that.

23 Is there other objection?

24 MS. REARDON: If we could -- would you like me to
25 move to the other exhibits in this group?

1 THE COURT: Any other objections you have in this
2 bucket.

3 MS. REARDON: No others on this exhibit, Your Honor.

4 THE COURT: Okay. Are there other exhibits in this
5 bucket that you have other objections on?

6 MS. REARDON: There are.

7 If we could go to slide 42, please.

8 So here slide 42 shows PX 586, which is an email between
9 Netlist and Samsung regarding a September 27th, 2019, meeting.
10 It's a technical meeting at the time that Samsung was
11 licensed, and there is no evidence in the record that this
12 meeting even occurred. So Netlist -- if you look at the
13 subject matter--and I apologize because it's hard to read
14 here--you know, it mentions generally that the teams would
15 like to talk about power management for DDR5 and that's it.
16 There is not a patent listed on this slide.

17 And so if the Court already said that there can't be a
18 finding of willfulness pre-July 15th, 2020, as it relates to
19 the DDR5 -- the '918 and '054 Patents, which is the only thing
20 this exhibit would be related to, then this exhibit should be
21 excluded. There's no evidence that this is intentional
22 knowledge of Netlist's patents.

23 THE COURT: All right.

24 MS. REARDON: And I believe we've already discussed
25 PX 621.

1 But if we can move to slide 45, that's PX 703.

2 And this is a bit of a unique issue, Your Honor. So
3 PX 703 is a presentation from 2008 that was allegedly sent to
4 Samsung, and there's kind of a procedural issue here even
5 before the substantive issue, and that is PX 703 was produced
6 on November 17th, 2022, and that time frame is important
7 because that became the subject matter of Samsung's motion to
8 exclude.

9 If we could go to the next slide.

10 And here, Your Honor, it's showing that Samsung moved to
11 exclude documents that included PX 703.

12 And if we could go to the next slide.

13 The Court excluded the documents in this range, which
14 again, included PX 703.

15 And at the next slide, we acknowledge -- so the Court
16 granted the motion, and we acknowledge that Netlist wants to
17 use these to show notice and not conception and reduction to
18 practice documents, which was in the Court's order here, but
19 we believe from a procedural perspective that this document
20 was already excluded by the Court's order.

21 And then if we could go to the next slide.

22 THE COURT: And that was which Exhibit? 703?

23 MS. REARDON: This is PX 703, yes.

24 THE COURT: All right.

25 MS. REARDON: And so here, Your Honor, on the

1 left-hand side is the specific snip or specific slide from
2 PX 703 that Netlist wants to use, and you see here there's no
3 reference to a patent, there's just general discussion of
4 technology, and the asserted patent that they claim this is
5 relevant to is knowledge of willfulness -- is knowledge for
6 purposes of willful infringement the '339 Patent. That patent
7 was filed nearly 10 years later on March 27th, 2017.

8 And then if we could finally go to the next slide.

9 This should also be excluded because there is no
10 indication in the record that Samsung received this. It's
11 not produced with a related email correspondence. There is
12 no evidence that this was transmitted to Samsung.

13 THE COURT: All right.

14 MS. REARDON: And then, finally, if we could go to
15 the next slide as it relates to PX 1778 and PX 1320, which is
16 an email and attachment. Your Honor, I understand your
17 position as to the relevance of the '060 Patent disclosure,
18 which would be on the left-hand side here, but our concern --

19 If we go to the next slide.

20 -- is that Netlist will use this document -- which was a
21 2015 email and presentation. Again, if you look at the email
22 header here, all internal recipients to Netlist, also labeled
23 attorney/client privileged, and listed as additional slides
24 for Samsung, but no evidence that this was an email to
25 Samsung. We're concerned that they are going to use this as

1 prejudicial use of -- as a back door to use this exhibit as
2 evidence of reduction to practice, which has already been
3 excluded, and it's prejudicial to introduce this -- all this
4 conception and reduction to practice discussion simply to
5 constitute notice of the '060 Patent.

6 So perhaps this is one that could be redacted, given the
7 Court's instruction regarding the '060 Patent, but the
8 remainder of the document we believe to be prejudicial.

9 THE COURT: So the part that you're saying would not
10 be redacted is what?

11 MS. REARDON: If we could go back one slide.

12 It would be the slide on the left that lists kind of the
13 patent vitals of the '060 Patent generally.

14 THE COURT: All right.

15 MS. REARDON: And we would stand that the '833 snip,
16 which is, again, a parent patent, that that should be excluded
17 because it is not a basis -- knowledge of the parent patent is
18 not a basis for willfulness.

19 THE COURT: All right.

20 MS. REARDON: Thank you, Your Honor.

21 THE COURT: Thank you, Ms. Reardon.

22 MR. SHEASBY: PX 446. Scroll to page 2.

23 So this was sent to Samsung at Samsung's request.

24 *WCM Industries* indicates that knowledge of a pending patent
25 application is a factor, it's not the only factor, but it's a

1 factor that can go to show willfulness. In this case
2 knowledge of the direct patents in the same family with the
3 same specification would go to show that they're aware that
4 this specification relates specifically to, for example, the
5 DDR4 NVDIMM, which is the product that has on-module power
6 management.

7 So the NVDIMM has on-module power management. They then
8 transition that in DDR5 to on-module power management, which
9 is now being accused of infringement. And so it's just not a
10 random connection between throwing the patent out; it's the
11 patent and the covered products as DDR4 NVDIMM. DDR4 NVDIMM
12 used on-module power management, and then they extended that
13 in DDR5 to on-module power management, and the children of the
14 '833 is what is -- we are asserting against on-module power
15 management.

16 So I think is it on its own dispositive? No. But does
17 it tend to show knowledge of the patents what the technology
18 covers? I think it does, Your Honor.

19 THE COURT: All right.

20 MR. SHEASBY: Shall I move on?

21 THE COURT: Yes.

22 MR. SHEASBY: Let's go to PX 586.

23 This document is exactly the type of evidence that can go
24 to show the value of our technology, and it is consistent with
25 the previous document.

1 So let me sort of give you the chronology. In 2007 we
2 filed an application that ultimately issued in 2020 and 2021
3 -- 2021 as the on-module power management patents, the '918,
4 and subsequently the '054.

5 In 2019 there was no possible infringement, not only
6 because the patent hadn't issued but because Samsung had yet
7 to launch a DDR5 product. What happened was, is they met with
8 us, recognizing that we have important technology in power
9 management IC for DDR5 DIMM. That's the exact portion of
10 technology that we are accusing of infringement in DDR5.

11 They met with us, they recognized our technology was
12 valuable, our patents issued, they knew our patent -- we had
13 applications pending in this space, and the way we know that
14 we had applications pending in this space is because --

15 If you go to deck 2 from the PTC, slide 7. Deck 2 from
16 the pretrial conference. Slide 7.

17 If you'd put it on the elmo, Madam Courtroom Deputy.

18 This is what we showed them in 2014 that says we had
19 on-module power management patents pending that were filed in
20 2017. So they knew that in 2014 -- and we can actually show
21 it on the screen now so it's clearer. So this is 2014 us
22 putting them on notice that we had on-module power management.
23 And then if you go to the document they're challenging, which
24 is PX 586, this is them asking us to speak to them about our
25 on-module power management technology for DDR5. The agreement

1 subsequently terminated. After the agreement terminated the
2 DDR5 patents issued. After the DDR5 patents issued, they
3 launched their infringing DDR5 product.

4 So I believe that this does go -- a tendency to show
5 evidence of knowledge and recognition of the importance of our
6 technology and could go to a finding of willfulness, although
7 likely on its own not sufficient.

8 I'll move on, unless Your Honor has any other questions.

9 THE COURT: Go ahead.

10 MR. SHEASBY: PX 703.

11 I don't ascribe any ill-will towards --

12 It's at 17. Page 17.

13 We were very, very careful about complying with the
14 Court's previous order. There was a colloquy in front of
15 Judge Gilstrap about this exact document. This document was
16 cited in Doctor Brogioli's report. He allowed this portion of
17 the report to come in. And we made clear that the purpose of
18 this was to use to show their motivation to subsequently adopt
19 our technology. This explicit document was shown to Judge
20 Gilstrap. He concluded that it was properly in the report,
21 and he did not conclude that it was part of his previous
22 order.

23 THE COURT: I mean, what they showed me was that he
24 struck the documents that were disclosed or provided on
25 November the 17th, I think it was.

1 MR. SHEASBY: Your Honor, that is incorrect. That
2 they -- this document was argued in front of the Court at the
3 pretrial conference, and he overruled the objection, and the
4 document is in Doctor Brogioli's unstricken report. The
5 reason is this does not show conception and reduction to
6 practice. This has nothing to do with conception or reduction
7 to practice. This shows whether the motivation -- I can give
8 you the pin cites of where in the transcript he makes clear
9 that this document can come in.

10 THE COURT: There is a difference between denying a
11 motion to strike the expert's report and admitting a document,
12 so if you can show me where he -- Judge Gilstrap ruled that
13 this document, Exhibit 703, should be admitted, that would be
14 helpful.

15 MR. SHEASBY: No, Your Honor, I cannot show that.
16 I am simply responding to the idea that this document was in
17 violation of his previous ruling. That argument was joined at
18 the motion to strike Brogioli at pretrial transcript day 2,
19 pages 23 to 25, pages 35 and pages 46. So the question is not
20 whether this is admissible; the question is was -- did this
21 violate the order. His Honor said it did not.

22 Second step --

23 THE COURT: The order that you're talking about
24 violating, is that the order that struck the late produced
25 documents?

1 MR. SHEASBY: It struck -- it didn't strike the
2 late produced documents; it struck us -- it struck documents
3 from -- relying on documents for conception and reduction to
4 practice. There are many other documents that were produced
5 at that time and he didn't strike all those documents. It was
6 purely targeted at conception and reduction to practice. He
7 cited that same order to try to strike Doctor Brogioli's
8 discussion of this exact document, and His Honor held that the
9 -- the ruling -- his previous ruling did not apply to this
10 document.

11 THE COURT: All right. Well, I will look further at
12 the record on PX 703. I'll carry it.

13 MR. SHEASBY: Okay. And then PX 1778. Let's scroll
14 down.

15 We have no intention -- so this document was in 2015.
16 This was after -- long after the --

17 Scroll back up.

18 This is long after the filing date of the '060 Patent,
19 and I think they conceded it comes in for that evidence. It's
20 the last page of this document that I think they're concerned
21 about.

22 Scroll up. Sorry. Go up. Right there.

23 They're concerned about this. They're suggesting that
24 this was going to be used as a back door conception and
25 reduction to practice document. That would be impossible.

1 It doesn't -- it was -- this document -- this presentation
2 was made in 2015, which was seven years after the priority
3 date -- eight years after the priority date of the '918 and
4 '054 Patents. And the reason why this is relevant is it talks
5 about our technology on power management, which is exactly
6 what we're citing -- we're asserting against for the '918 and
7 '054 Patents. And it's in that bottom right-hand box where it
8 says "power control and regulation" and that we have patents
9 on that subject.

10 THE COURT: All right.

11 MR. SHEASBY: Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Sheasby.

13 Ms. Reardon, if you have any brief response, you may.

14 MS. REARDON: Yes, Your Honor, if I may, just two
15 very quick points.

16 Mr. Sheasby walked us through a chronology of the tale of
17 DDR5 evidence using disclosure and the exhibit that was the
18 reference to the meeting. That is all evidence of copying.
19 That's exactly -- he walked us through exactly how Netlist
20 intends to use it, and there is nothing more and the evidence
21 he's shown does not suggest that Samsung copied anything at
22 all. And so we think that allowing the evidence in, if that's
23 the story they're going to tell, is highly prejudicial to
24 Samsung.

25 And then lastly on PX 703 --

1 THE COURT: Before you move on.

2 MS. REARDON: Yeah.

3 THE COURT: It's my understanding that the order
4 preventing them from arguing copying is based on a lack of
5 evidence of copying, and that what he is now saying he wants
6 to use this for is just knowledge of Netlist's patents. How
7 would it be not relevant to that?

8 MS. REARDON: Yes, Your Honor.

9 He's saying knowledge of Netlist's patent on the one hand
10 then walking us through evidence that when the parties were
11 under joint development without references to the patents
12 themselves in any of those subsequent documents, that all of
13 that shows copying of the specific patents that are asserted
14 here, and so we think that that is improper and prejudicial to
15 Samsung.

16 THE COURT: Well, it's my understanding they are not
17 going to make that argument to the jury, but I understand what
18 your concern would be.

19 MS. REARDON: Yes. And I think the argument that
20 he's going to make, he's going to present all of that and then
21 approach the bench to say--right?--I'm going to now use the
22 word 'copying'. Right? And we don't think that should stand.

23 And lastly, Your Honor, on PX 703, I just wanted to point
24 out as well the lack of foundation. It's not attached to an
25 email that he was sent to Samsung. It's not from Samsung's

1 files, so we think 703 should be excluded on that basis as
2 well.

3 And if I may, one very brief last point, Your Honor, the
4 email that he showed you from 2019 from Neal Knuth at Samsung
5 talking about a technical meeting, that has absolutely nothing
6 to do with patents. There is not a patent mentioned in that
7 email.

8 THE COURT: I understand there's not a patent
9 mentioned, but there is reference to the technology that
10 Netlist claims is in their patents, isn't there?

11 MS. REARDON: Yes, Your Honor. In a general sense
12 it says power management IC for DDR5 DIMM, so very general
13 description of technology that was known and around at the
14 time.

15 THE COURT: And I think it's their argument that the
16 reason Samsung is reaching out to them to discuss it would be
17 because they have patents in it. What would be the other
18 reason that Samsung would be seeking a meeting with Netlist
19 about that technology?

20 MS. REARDON: Your Honor, they were in license at
21 the time but, more importantly, part of the agreement between
22 the parties was joint development related to NVDIMM products.
23 And so they just as easily could have been
24 discussing--right?--that joint development project which
25 seems far more to be the case given the JDLA.

1 THE COURT: And certainly the Samsung witnesses who
2 asked for the meeting would be in a position to provide that
3 information.

4 MS. REARDON: So I just want to point out, Your
5 Honor, no one on -- no Samsung witness on this email and no
6 Netlist witness on this email were deposed in this case or
7 will be a witness at trial.

8 THE COURT: Okay.

9 MS. REARDON: Thank you, Your Honor.

10 THE COURT: Certainly.

11 Mr. Sheasby, what is your response to the foundational
12 problem with 703, that there doesn't appear to be any way to
13 show that it was actually seen by Samsung?

14 MR. SHEASBY: PX 703.

15 Yes. So Dr. C.K. Hong, who is our corporate
16 representative, testified about this document at his
17 deposition, he testified that the meeting happened, and our
18 corporate representative will also testify that the meeting
19 happened.

20 THE COURT: All right.

21 MR. SHEASBY: We have email records that establish
22 that the meeting happened.

23 THE COURT: So there's already deposition testimony
24 on this?

25 MR. SHEASBY: Yes, Your Honor.

1 THE COURT: All right. Well, I'm still going to
2 carry the objection to 703 to look further into the argument
3 that it is covered by the order striking production as
4 untimely, but I'll overrule the relevance objections to the
5 other documents in this bucket.

6 And before we move on, we'll take the afternoon recess.

7 (Brief recess.)

8 THE COURT: Thank you. Please be seated.

9 All right. That takes us to the next bucket.

10 MS. REARDON: Your Honor, Kate Reardon again for
11 Samsung.

12 If I may proceed?

13 THE COURT: Yes, Ms. Reardon. Go ahead.

14 MS. REARDON: So the next bucket is PX 183, which I
15 believe is the email on PX 184 which is the attachment. And
16 this is an email produced -- or sent and produced in
17 litigation to Samsung's outside counsel in the CDCAL
18 litigation we were talking about earlier this afternoon
19 attaching a patent list.

20 And so we have a few objections to this, the first being
21 that obviously the Court's standing motions in limine preclude
22 reference to other litigation. This is obviously a production
23 email from Gibson Dunn to Bird & Marella--Bird & Marella was
24 Samsung's counsel in that case--disclosing their ninth and
25 10th productions of which this patent list appeared.

1 We think that jurors will give it undue weight given that
2 it was produced in litigation, and it will assume that Samsung
3 received all of this information. And that's a critical
4 point, Your Honor, because this was produced under a
5 protective order in the Central District of California case,
6 and there is no evidence that anyone at Samsung actually
7 received this document, or that its counsel somehow passed it
8 on to Samsung, or that it even could have under the operative
9 protective order there.

10 And we understand that Netlist wants to use this
11 exhibit again to show that Samsung had notice of four of
12 the six asserted patents; four of the five I believe now with
13 one patent out. But there is, again, no evidence that Samsung
14 would have even received it.

15 And so the concern is that if this document is allowed
16 in, even in a redacted form, that we're going to have to
17 discuss the context in which Samsung received the document,
18 that it was marked confidential, and to receive it would have
19 been in violation of some protective order, and, more
20 importantly, that there's simply no evidence that this was
21 ever sent to Samsung itself.

22 Thank you.

23 THE COURT: Thank you, Ms. Reardon.

24 MR. SHEASBY: If we can have PX 183.

25 This is a complicated document. It's a close question.

1 Substantial portions of it will at a minimum have to be
2 redacted. The Bird & Marella firm was the firm that
3 subsequently received the licensing letter from Netlist, and
4 we know that -- and so the Bird & Marella firm was the firm
5 that was responsible for whatever license negotiation occurred
6 between Samsung and Netlist, but I concede that this has to
7 go. The only question is can we have the document in and
8 someone will testify that this document was provided to
9 Samsung's lawyers and it has for four of the six
10 patents-in-suit on it.

11 If we scroll down to the next document.

12 So I'm not going to sort of gaslight the Court. This
13 is a very close question as to whether it's allowed. The
14 unstricken portions of Mr. Kennedy's report stop there. It is
15 in the unstricken portions of Mr. Kennedy's report. But this
16 was not just -- Bird & Marella was not just litigation
17 counsel; they were licensing counsel as well. It's close.

18 THE COURT: I have never allowed correspondence of
19 counsel to be used in evidence against the client, and I don't
20 see why this should be an exception to that. I'll sustain the
21 objection to 183 and 184.

22 Ms. Reardon, what's next?

23 MR. SHEASBY: Your Honor, this is -- Your Honor, the
24 second bucket is more of the same as to Proffer No. 1 which
25 the Court already denied. I did find two other cases, Federal

1 Circuit cases, but they're no closer than *Mentor Graphics*.

2 THE COURT: All right. And I don't think that
3 *Mentor Graphics* is talking about our situation at all.

4 MR. SHEASBY: I understand, Your Honor. If you
5 don't like *Mentor*, you're not going to like the two other
6 ones.

7 THE COURT: All right. I have tremendous regard for
8 the Federal Circuit, and especially Judge Moore, who was the
9 author of *Mentor Graphics*; I just don't think her guidance
10 there helps us. It doesn't apply.

11 MR. SHEASBY: She's not returning my phone calls,
12 Your Honor.

13 THE COURT: That's what she told me, actually.

14 All right. So the -- 1676 and 1786 are also excluded.

15 MR. COLVIN: Your Honor, I believe that bucket also
16 included PX 588.

17 THE COURT: Oh, you're right.

18 MR. SHEASBY: And, Your Honor, I just wanted to
19 clarify. Did Your Honor -- obviously Your Honor should take
20 whatever time you need, but did Your Honor have a chance to
21 look at that issue of 706 at the break? I just --

22 THE COURT: 703.

23 MR. SHEASBY: 703, yes.

24 THE COURT: No. I want to look further at the
25 transcript and other rulings regarding that motion to strike,

1 but I will follow that up.

2 MR. SHEASBY: Thank you, Your Honor.

3 MR. COLVIN: Your Honor, Bucket 3 is PX 705 and
4 PX 708. This is a similar story perhaps, Your Honor, to 703.
5 The documents here have Bates ranges that are within those
6 ranges that were noted by the Court as those that Netlist
7 shall be precluded from relying on. And so that's the first
8 argument, particularly with respect to 705.

9 We have an additional argument with respect to 708, and
10 that's -- we're just not sure how Netlist plans to use 708.
11 It seems to us that it has no relevance. This is a -- these
12 are meeting minutes from a JEDEC meeting, and Netlist is
13 indicating that they have IP that reads on a proposal that was
14 provided by TI at the time. This proposal is a DDR4 register
15 ballout, which really isn't anything at issue in this case,
16 and so we're a little bit confused by 708.

17 It also has a Bates number that falls within that range,
18 and so to the extent Netlist is going to use it, we think
19 they're going to use it to try to show reduction to practice,
20 that they have IP that relates to perhaps one of the issues in
21 this case. But, nevertheless, it has a Bates number within
22 the excluded range, Your Honor.

23 THE COURT: And while you're up there, Mr. Colvin,
24 tell me -- the reference to reduction to practice, it's my
25 understanding that that argument has been excluded?

1 MR. COLVIN: Your Honor, so as part of its ROG
2 response on conception and reduction to practice, Netlist
3 provided a large document production. We asked the Court to
4 find that that production was late with respect to conception
5 and reduction to practice because it needed to be provided
6 earlier. The Court agreed, and then the Court granted our
7 motion to strike and said here that I have highlighted on the
8 screen, "Netlist shall be precluded from relying on its
9 late-produced products purportedly practicing the asserted
10 patents and its conception and reduction to practice
11 documents."

12 And you'll see on the non-highlighted portion that I have
13 on the screen, "The Court found that Netlist's late disclosure
14 in mid-November of some 30,000 documents with fact discovery
15 closing on December 22nd to be unreasonable."

16 And this is the Bates range, Your Honor, from
17 Netlist_Samsung_EDTX53917 through 86408. The Bates number on
18 Document 705 is -- ends in 63616, which is in that range, and
19 the Bates number for Document No. 708 is 78119, which is also
20 in that range, Your Honor. I can provide Your Honor a copy of
21 those documents if you'd like, or put them on the elmo if you
22 want to see the documents themselves.

23 THE COURT: No, that's all right. I will have to
24 look further into that and -- at the same time that I'm
25 looking at 703. What is the other argument as to those? Is

1 there another argument?

2 MR. COLVIN: The only other argument would be with
3 respect to 708, we're just not sure what the relevance of this
4 document is at all.

5 THE COURT: All right.

6 MR. COLVIN: Certainly we think it should be
7 excluded because of the Bates range, but I suspect
8 Mr. Sheasby's going to have something to say to us about
9 relevance of that document.

10 THE COURT: All right. Thank you, Mr. Colvin.

11 MR. SHEASBY: Yes, Your Honor.

12 We were very careful in complying with the Court's order.
13 These documents have nothing to do with conception and
14 reduction to practice. They have to do with something quite
15 different. And to get to that, this is their argument
16 regarding why this relates to behavior within JEDEC.

17 And why don't we go ahead and pull up PX 705.

18 At the pretrial conference, the Court said that it's
19 potentially -- that they argued that technologies and
20 apportionment that should be given to any contributions by
21 the patents in this case need to take into account the JEDEC
22 standards and contributions, companies, including Netlist, and
23 including everyone else makes to those standards.

24 It goes on to say, "The fact that JEDEC was sitting in on
25 meetings"--I'm sorry--"that Netlist was sitting in on meetings

1 at JEDEC and was silent despite its obligations to disclose is
2 highly relevant. It's relevant to whether Samsung knew about
3 the patents."

4 So these documents have nothing to do with conception and
5 reduction to practice. This first document, which is DX 705,
6 it purely --

7 Actually Mr. Colvin -- let's go back to Mr. Colvin's
8 slides. That's probably the easier way to do it. DX 705.

9 MR. COLVIN: 708?

10 MR. SHEASBY: 708. Excuse me.

11 So this document is relevant because it shows that
12 Netlist does, in fact, disclose its IP and makes clear that
13 when it has technology reading on patents, reading on proposed
14 technologies, it makes that disclosure clear.

15 So this has nothing to do with conception and reduction
16 to practice; it has to do with the fact that the document --
17 the fact that we disclose our existence of our IP.

18 And may I approach counsel's table briefly, Your Honor?

19 THE COURT: All right.

20 MR. SHEASBY: Give me one second.

21 THE COURT: So what makes it relevant whether
22 Netlist discloses its IP or not?

23 MR. SHEASBY: I don't think it's relevant at all,
24 Your Honor. The problem is that they're making it an issue in
25 the case. And so we lost that on the MIL. The Court denied

1 our MIL. The Court is not going to exclude them from
2 discussing whether Netlist discloses its IP or not in JEDEC or
3 sits on its hands. So I wish it wasn't relevant, and I would
4 like a ruling that it was -- wasn't.

5 If you go to -- so this is -- although this says 708,
6 it's actually 705. And I can show you another one at 708.

7 If you go to DDX -- PDX 2.49. Scroll one forward.

8 So this is 708. So this is us disclosing that we had IP
9 on on-module power management. They're saying that they were
10 not on notice, so they were led to believe we didn't have IP
11 on on-module power management because we didn't disclose it in
12 JEDEC meetings, and this document, PX 708, says we did
13 disclose that we have fundamental IP on JEDEC meetings. So
14 this would go to contradict the argument that we sat on our
15 hands or were silent in JEDEC.

16 So if the sat on the hands or silent in JEDEC is coming
17 in these, documents are relevant. They have nothing to do
18 with conception and reduction to practice. In fact, this
19 document is three years after the NVDIMM patents were filed.
20 It has nothing to do with the Court's previous ruling.

21 These documents are also -- this document, in addition,
22 was not even produced by Netlist. The representation to the
23 Court that this was somehow relating to a late-Netlist
24 production, this is a Samsung document that was produced
25 from Samsung's records. It has nothing to do with conception

1 and reduction to practice, and it has nothing to do with that
2 order that Judge Gilstrap issued that we tried to carefully
3 comply with.

4 THE COURT: Why are these documents within the Bates
5 range?

6 MR. SHEASBY: Sam-Net is their Bates range, not our
7 Bates range.

8 THE COURT: There was an indication that the
9 documents fell within the Bate range that was in the Court's
10 ruling on the motion in limine?

11 MR. SHEASBY: Yes. So I don't know why they said
12 that, but that is absolutely not the case as to 708.

13 THE COURT: All right.

14 MR. SHEASBY: And the motion in limine did not
15 exclude all the documents in that Bates range. The motion in
16 limine excluded them for use for conception and reduction to
17 practice, Your Honor.

18 THE COURT: All right.

19 MR. SHEASBY: Thank you, Your Honor.

20 But 708 clearly has nothing to do with that order at all.
21 It's not even our production; it's theirs.

22 THE COURT: All right.

23 MR. COLVIN: Your Honor, Mr. Sheasby is absolutely
24 correct regarding the Bates range of 708. I am sorry. No
25 excuse for that. I just didn't read the prefix of the Bates

1 range in my notes any better, and I should have. That's my
2 fault, Your Honor, and I should apologize with that.

3 With respect to the 2008 document, which is Document
4 No. PX 705, and then PX 708 is -- are meeting minutes from
5 2010, both of those relate to information that was subject to
6 a litigation with TI and, of course, that violates MIL 13.
7 And, in fact, this was discussed at the pretrial conference,
8 day 1 transcript, page 217. Mr. Kennedy, who is their damages
9 expert, refers to statements in these documents and that's
10 out, Your Honor. Judge Gilstrap struck that from
11 Mr. Kennedy's report.

12 So we don't believe that there's any basis, Your Honor,
13 for that to come in when, as Mr. Kennedy uses it, that has
14 been stricken from his report.

15 THE COURT: You're saying that relates to 705?

16 MR. COLVIN: That relates to both of the documents,
17 Your Honor.

18 THE COURT: All right.

19 MR. SHEASBY: So, Your Honor, I was at the pretrial
20 conference. What -- there was a subsequent litigation between
21 Texas Instruments and Netlist. Reference to that litigation
22 was excluded. PX 705 makes no reference to a litigation
23 between Netlist and TI. It makes no reference to anything
24 other than the fact that we disclose when we have IP, which is
25 what they're alleging that we didn't do.

1 As to PX 708, that has nothing to do with Texas
2 Instruments; that has to do with Viking. There was no lawsuit
3 involving Viking. It's a completely unrelated matter to Texas
4 Instruments.

5 I should also note that PX 705 is in the -- the
6 unstricken portion is expressly discussed by Mr. Gillingham in
7 his rebuttal report at paragraph 45, and it was not stricken.
8 Mr. Gillingham is one of our experts. And so that's all I can
9 say about that TI issue --

10 THE COURT: All right.

11 MR. SHEASBY: -- is the Document --

12 THE COURT: I'm going to overrule the objection to
13 PX 708, which I find is relevant. And I'm going to carry 705
14 along with 703 on the issue of the scope of the order striking
15 certain documents.

16 Which would take us to 1656.

17 MR. COLVIN: Thank you, Your Honor. 1656.

18 So 1656 is a JEDEC standard to a product and technology
19 that is not at issue in this case at all. This is a JEDEC
20 standard to what's called the XFM memory device. At no point
21 is the document relied on nor is there depo testimony about
22 it.

23 THE COURT: Do you know what the Plaintiff's basis
24 to claim relevance is, or should I hear that from them and
25 give you a chance to respond?

1 MR. COLVIN: Why don't we hear that from
2 Mr. Sheasby, Your Honor.

3 THE COURT: All right. Thank you, Mr. Colvin.

4 MR. SHEASBY: If you could turn to Plaintiff's 1656,
5 page 21.

6 One of the issues in the case is whether under JEDEC
7 technology an LDO is an example of a converter, and JEDEC
8 considers LDOs to be converters. You can see that in figure
9 A1. It shows an example of possible power distribution.
10 Converter indicates a converter such as DCDC or an LDO.

11 And so the only page we need from this document is this
12 one. It shows that at the time of the work in the field that
13 LDOs were considered converters. It was -- we examined
14 Mr. -- their -- Mr. McAlexander, their expert on it. He
15 acknowledged what it was, he acknowledged what it shows, he
16 acknowledged that it's inconsistent with his opinion. That's
17 the relevance, Your Honor. And it's a JEDEC standard and,
18 therefore, it would not be hearsay even though they haven't
19 raised a hearsay objection.

20 THE COURT: All right.

21 MR. COLVIN: Your Honor, we think because this is a
22 JEDEC standard to a product that is not in this case, it's a
23 JEDEC standard to what I'm showing here on the left, this
24 XFMEXPRESS, and then the accused product on the right, they're
25 completely different. But because this is a JEDEC standard,

1 we think that taking this one paragraph in this document
2 presents a substantial risk of jury confusion. Because it's a
3 JEDEC standard, we think a jury's going to see that and just
4 sort of focus on the idea, Oh, this is a JEDEC standard; this
5 must be, you know, very relevant, and the fact is that it's
6 highly prejudicial because it's a JEDEC standard, Your Honor.

7 THE COURT: Well, what is your response to their
8 argument that it bears upon LDO, which is relevant?

9 MR. COLVIN: Well, the issues with respect to LDO
10 and converter with respect to the patents and the products at
11 issue, and the fact that there is some other document out here
12 that it speaks to an LDO, Your Honor, we think isn't relevant
13 to the particular issue that's going to be in front of the
14 jury. What's in front of the jury is a different product
15 that's covered by a different standard.

16 And so by showing them this other standard that talks
17 about LDOs and converters, we think that, again, that has a
18 substantial risk of confusing the jury. They're going to see
19 JEDEC and they're going to see LDO and converter and they're
20 going to have a difficult time separating that out between,
21 Oh, wait, that was for this other product, that's not part of
22 the case, when everything else they hear is going to be part
23 of the case related to the product that's on the right, Your
24 Honor.

25 THE COURT: Is the way JEDEC uses LDO relevant to

1 the accused products?

2 MR. COLVIN: I don't know standing here in front of
3 you, Your Honor, and so I don't want to misrepresent it to
4 you. Certainly with respect to the product that's at issue,
5 that that can be relevant, but with respect to some other
6 product, I think that would be the distinction. As far as an
7 LDO is an LDO is an LDO across all JEDEC standards, I don't
8 believe that's a relevant thing, Your Honor.

9 THE COURT: All right. Thank you, Mr. Colvin.

10 Whether or not it's sufficient, I believe the Plaintiff
11 has established sufficient relevance, and I'll overrule the
12 objection to 1656.

13 MR. COLVIN: Thank you, Your Honor.

14 The last one in this group, Group 5, this is PX 1781 and
15 PX 1816.

16 I can make this quick, Your Honor. I believe it relates
17 to an issue that has already been discussed a bit. There's a
18 little nuance there, but I suspect Your Honor will be able to
19 grasp that.

20 So we believe that this document is prejudicial because
21 Netlist is going to use it to show that we knew -- Samsung
22 knew of an application to a parent of an asserted patent.
23 We think that that has no relevance in the case. We think
24 just knowing of the parent of a patent has no relevance to
25 willfulness. But this goes even one step beyond that and

1 shows a disclosure made in a JEDEC meeting of an application
2 of a parent. And so we think that it's got no relevance to
3 the case.

4 And I'll stand on that, Your Honor.

5 THE COURT: All right. Thank you, Mr. Colvin.

6 I think that if at the end of the trial that's all the
7 evidence they've put in, you'll have an easy motion, but I'll
8 overrule the objection to relevance.

9 MR. SHEASBY: And just to clarify, 1781 and 1816 are
10 in, Your Honor?

11 THE COURT: Yes.

12 MR. SHEASBY: Thank you, Your Honor.

13 THE COURT: All right. That -- one other thing I
14 want to say before we move on from the Plaintiff's objections
15 is that some of these were ordered to be redacted. In the
16 event that counsel are not able to agree on redactions, I'll
17 say that we'll take those up at a hearing on Tuesday of this
18 coming week. So I would ask counsel to work in the next few
19 days to see if you can agree upon the necessary redactions.

20 Let's go ahead to Plaintiff's objections to the
21 Defendants' exhibits.

22 MR. SHEASBY: Yes, Your Honor. DTX 2.

23 Your Honor, DTX 2 is --

24 Can I have the elmo, Ms. Andrews?

25 DTX 2 is the procedures for JEDEC, and the reason why

1 they want this in is because it has reference to the
2 obligation to license under reasonable and non-discriminatory
3 terms in it and if a patent is essential. That issue is
4 irrelevant in the case because the Court has held that there's
5 no RAND obligation because neither party has described the
6 patents as essential and, therefore, there should be no
7 discussion or reference to a RAND obligation in this document.

8 In addition, this document also relates to a disclosure
9 obligation for essential patents. Since the patents are not
10 essential, there was no disclosure obligation and, therefore,
11 it would not be relevant for that purpose either.

12 So those are the two bases for relevance that they
13 presented to us. Both of them are precluded by the Court's
14 order that there's no RAND obligation in this case and there's
15 no essentiality allegation in this case.

16 I will say that there's a third potential theory that
17 they may advance. There's a discussion of the fact that in
18 the -- well --

19 THE COURT: Why don't we wait and see if they
20 advance it.

21 MR. SHEASBY: That's not super productive. I agree
22 with you.

23 MR. COLVIN: If I could have my slides, please,
24 Ms. Andrews.

25 Your Honor, so Group 1 here is DTX 2, DTX 8, and DTX 10.

1 DTX 2 and DTX 8 are both JEDEC Manual Organizations and
2 Procedures. There's a lot in these documents, Your Honor.
3 There is no preclusion by the Court's ruling that we can't
4 rely on manuals of JEDEC. There's going to be a lot --

5 THE COURT: Well, what are they relevant to? Why
6 don't we start there.

7 MR. COLVIN: Yes, Your Honor.

8 So there's going to be a lot of discussion about JEDEC --
9 how the parties acted at JEDEC. In fact, we've heard a lot
10 about it already today. Netlist has already said that they're
11 going to talk about how they disclosed things in JEDEC
12 meetings. And this JEDEC Manual of Organization and Procedure
13 talks all about that. It talks about when someone should
14 disclose and when they shouldn't.

15 We're not going to use this to talk about RAND
16 obligations. The Court has said that that's not something
17 for this trial. But these manuals are relevant to written
18 description, willfulness, damages, and then some equitable
19 issues. Both Samsung and Netlist have JEDEC experts that rely
20 on these documents for their opinions. There's just going to
21 be a lot of discussion in this case about how parties behaved
22 in JEDEC, how parties should behave in JEDEC, and the JEDEC
23 manual is the evidence of how that conduct should happen.

24 THE COURT: Give me a 'for instance' of something
25 in the manual that you believe is relevant for the jury.

1 MR. COLVIN: Your Honor, I've got here on my slide,
2 this is from Netlist's JEDEC expert report. It says here, "As
3 set forth, JEDEC policies dictate 'disclosure of a patent' is
4 deemed to include all patents claiming priority of a single
5 filing," and they cite to these JEDEC policy guidelines. So
6 there is an example of how one of the experts here is using
7 these expert reports as evidence to show how a party should
8 behave.

9 THE COURT: Well, I understand that it's in a
10 report. What is the relevance of it for the jury?

11 MR. COLVIN: Your Honor, the jury is going to hear a
12 lot in this case about what parties did or did not do --

13 THE COURT: Show me -- let me interrupt you. I'm
14 just asking a simple question. You want to put this manual
15 in. Show me something in the manual that is relevant to an
16 issue before the jury. Is there something or -- I'm not in
17 the habit of just us handing the jury various, you know,
18 policy manuals.

19 MR. COLVIN: If I could have the elmo.

20 So, for instance, Your Honor, we just heard all about
21 meeting minutes. Here's a whole section about how attendees
22 -- about what the meeting minutes are, what they should do,
23 what they need to show, what they shouldn't show. There's
24 going to be some issue in this case about, you know, you were
25 at the meeting--what happened? What did you do? Well, this

1 shows what the meeting minutes would dictate. So if the
2 meeting minutes are supposed to capture something and it
3 didn't, well, we can go to this manual as evidence of what
4 the meeting minutes would show.

5 THE COURT: Like give me a 'for instance'. I'm
6 still not seeing how that is -- tells the jury anything they
7 need to know. There are some minutes that reflect that
8 certain things happened.

9 MR. COLVIN: There is going to be discussion, Your
10 Honor, of ballots. So I'm going to show you page 18 of this
11 document. There is a discussion of ballots where parties vote
12 on what should and shouldn't be adopted, and so we have right
13 here a description of what these ballots are all about. And
14 so this, Your Honor, serves as evidence to support the other
15 evidence of what ballots are all about.

16 THE COURT: Maybe we're not agreeing. Is there
17 anything you can show me that you would read to the jury and
18 so they would understand something? I understand there's a
19 general comment there on ballots, but what does that have to
20 do with an issue the jury's going to need to decide? I didn't
21 intend this to be a difficult question.

22 MR. COLVIN: Let me try another page, Your Honor.

23 So we have already heard today about disclosure of
24 patents, and so there's an issue in this case about whether
25 Netlist should have disclosed its patents in meetings.

1 Netlist was sitting in meetings, and there's an issue about
2 should they have disclosed them or not.

3 THE COURT: This is about potentially essential
4 patents?

5 MR. COLVIN: Potentially essential patents.

6 Now, there is no dispute in this case, Netlist isn't
7 claiming, and we agree that these patents are not essential,
8 but that's not what this manual says. It says they have to
9 disclose patents that are potentially essential. And so
10 there's going to be an argument about whether or not a patent
11 should have been disclosed when Netlist was sitting in the
12 meetings listening to these issues. And this, Your Honor,
13 shows that they had to disclose potentially essential patents.
14 And we would present that to the jury as Netlist is sitting in
15 a meeting, this is their obligation, and this is the evidence
16 that shows that obligation, Your Honor.

17 THE COURT: And the disclosure obligation that
18 you're going to contend Netlist violated is in connection with
19 what defense?

20 MR. COLVIN: Your Honor, we believe that there is
21 a -- hold on. It's in my notes, Your Honor.

22 If I could have my slides, Ms. Andrews.

23 So it goes -- one thing it would go to would be to
24 damages. It would go to the technical benefits of the
25 asserted patents. If Netlist -- if there could be an issue

1 that Netlist should have disclosed its patents, that would
2 mean that its patents wouldn't cover certain things. That
3 would go to the technical benefits of those asserted patents
4 which they base their damages case around, so that's one
5 relevant issue. Another relevant issue would be standards
6 estoppel. If they were supposed to disclose them but they
7 didn't, they shouldn't be able to assert them now.

8 THE COURT: And is that a defense you're maintaining
9 before the jury?

10 MR. COLVIN: Your Honor, that's an equitable issue.
11 That would go to the Court, but some of those facts would be
12 developed in front of the jury.

13 THE COURT: The only way they need to be developed
14 in front of the jury is if they relate to an issue the jury is
15 deciding. There certainly can be a trial afterwards that has
16 a matter that isn't relevant to the jury, but I'm just not
17 aware of the defense that you're building here.

18 MR. COLVIN: Well, Your Honor, I would say it's
19 also relevant to willfulness. If they should have disclosed
20 something at a certain time, if Samsung and Netlist are both
21 in a meeting and the technology is being discussed that
22 relates to our products and Netlist is sitting there and they
23 have a patent that is potentially relevant to the issue,
24 potentially relevant to the standard that our products
25 practice, and they didn't disclose it, that helps us on

1 willfulness, Your Honor. That's a fact that helps us on
2 willfulness. If it was potentially relevant, they should have
3 disclosed their patent. Because they didn't, we could assume
4 that they didn't have a patent that was potentially relevant
5 to this issue, Your Honor.

6 And this particular document, DTX 02 and 08, these
7 manuals, they show that Netlist would have had an obligation
8 to disclose that. Having failed to meet that obligation,
9 Samsung would be entitled to say in must not have had a
10 patent that was close to this standard; that was potentially
11 reading on this standard.

12 THE COURT: Is there anything else in this manual
13 that you believe is relevant to the jury?

14 MR. COLVIN: Your Honor, I certainly think the
15 disclosure issue that I just pointed the Court to is the
16 most relevant thing that is in my mind right now.

17 THE COURT: All right.

18 MR. SHEASBY: Your Honor, there is no allegation
19 Samsung presented an interrogatory response on willfulness,
20 non-willfulness, and they also offered a 30(b)(6) witness on
21 the subject. And neither of them disclose that there was any
22 reliance on what was or was not said at JEDEC. There is
23 nothing in the record to support the use of this document on
24 -- there's no allegation in the complaint that there was a
25 duty to disclose or a violation of the disclosure obligations,

1 and there is -- they -- their willfulness response
2 interrogatory makes no reference to this theory they're
3 presenting now. This is just an attempt to try to
4 surreptitious failure to disclose obligation.

5 The patents are not essential. They're not essential,
6 there's no duty for RAND, and there's no duty for disclosure.
7 Anything else beyond that takes us down a path that is a
8 surreptitious essentiality path, and it's not proper. What
9 you just heard about we relied on something that was said in a
10 JEDEC meeting, that is nowhere in any interrogatory response
11 and their 30(b)(6) witness on discovery. If Your Honor
12 doesn't believe me, I can pull up the response for you and
13 show you.

14 THE COURT: No., I am not questioning that. Thank
15 you, Mr. Sheasby.

16 Mr. Colvin, I haven't heard anything which leads me to
17 believe that this is relevant, and I am concerned about an
18 attempt to raise issues that are not anywhere pled, so I am
19 not going to pre-admit DX 02. But you can certainly, if you
20 find based on the testimony that it has some relevance that
21 you can establish, you can seek leave to use it, but at this
22 point I'm going to sustain the objection to it.

23 Which takes us to the objection to DTX 8.

24 MR. SHEASBY: DTX 8 and 10 rise and fall with the
25 same argument, Your Honor.

1 THE COURT: All right. Let me just -- are there any
2 other issues with respect to 8 and 10 that the Defendant wants
3 to raise?

4 MR. COLVIN: Your Honor, we agree they rise and fall
5 together.

6 THE COURT: All right. Then the objections are
7 sustained.

8 MR. SHEASBY: Can we have DTX 11?

9 Your Honor, there was an invalidity defense that was
10 based on a series of JEDEC materials. Those JEDEC materials
11 have been excluded by the Court as a basis for invalidity in
12 the motion for summary judgment that the Court heard. This is
13 Docket 211. And so given that the Court has excluded these as
14 invalidating references under Docket 211, they would then
15 become uncited or unused prior art and, at a minimum, they
16 would not go into evidence, if they could, in fact, still be
17 properly used for any purpose, which the Judge will decide at
18 trial. But these have been excluded as prior art references.
19 I believe that we've accurately identified the ones that have
20 been excluded, and they should not come in on that basis.

21 THE COURT: All right.

22 MR. COLVIN: Your Honor, I think there's -- there
23 are a lot of documents in this Group 2. I don't think it's
24 quite fair to lump them all together.

25 With respect to the first bunch in this group, which I'll

1 call DTX 11, DTX 12, DTX 13, and DTX 15, these are all JEDEC
2 meeting minutes, and including a JEDEC published standard
3 which is DTX 15 that show the background of the technology
4 and the state of the art. All these documents have been
5 stipulated to as far as their authenticity and their
6 non-hearsay status as being produced because they were
7 produced by JEDEC. And the use of the documents was not
8 precluded by the Court's ruling. Certainly we can't use these
9 documents for prior art, but we should be able to use them, in
10 fact, to show the state of the art at the time.

11 THE COURT: You know, the Court, as a rule, does not
12 allow unelected prior art to be used as exhibits to show the
13 state of the art. Your expert can certainly talk about the
14 state of the art and the background, but the problem of
15 allowing you to use exhibits that otherwise look like prior
16 art is the fact that the jury has no way to know that you're
17 not offering it as invalidating prior art, so the Plaintiff is
18 put in the position of either spending the time to show why
19 these don't invalidate or taking the risk that the jury will
20 think that it's un rebutted prior art.

21 Why would the jury need to have these as exhibits just
22 for the purpose of background?

23 MR. COLVIN: Well, Your Honor, I think with respect
24 to these documents, I think that for the jury to have them in
25 the room and be able to read, especially because DTX 15 --

1 DTX 15 is a bit different from 11, 12, and 13. DTX 15 is an
2 actual standard, and so I think DTX 15, at a minimum, is
3 something that the jury should be able to have and to look at
4 as part of background of the state of the art.

5 I understand Your Honor's point about, you know, trying
6 to slip in some of these background exhibits to -- you know,
7 to start checking boxes for invalidity. That's not what's
8 going to happen here, Your Honor. We're simply going to point
9 to these documents and say, you know, these documents show
10 what was state of the art at the time and before.

11 THE COURT: But for the estoppel principle, you
12 would be using these as invalidating prior art. Is that
13 right?

14 MR. COLVIN: No, Your Honor. At no point will we
15 take these documents and say that the patent is obvious in
16 light of these. At no point will we look at these and will
17 we, you know, draw from them to check a box.

18 THE COURT: But that's what you intended to do with
19 them, isn't it?

20 MR. COLVIN: Well, we certainly had an argument for
21 obviousness based on these documents. We absolutely did, Your
22 Honor. And the Court said we can't do that and we're not
23 going to.

24 THE COURT: Well, that's the very reason not to
25 introduce them and let the jury just take them back to the

1 jury room and come up with their own interpretation of them.
2 Your expert can certainly talk about the state of the art, but
3 I will sustain the objection to 11, 12, 13, and 15. If you
4 want to discuss the others, go ahead.

5 MR. SHEASBY: And just -- Mr. Colvin is correct.
6 There is at least one that's a different species in this.

7 If I can have -- we can actually use your slide,
8 Mr. Colvin, if that's easier. We can speed up time.

9 MR. COLVIN: Do you want to use this group here?

10 MR. SHEASBY: Sure. It will speed things up.

11 Okay. Here we go. No, wait. Is this the ballot? You
12 know what? It's not -- let's go to DTX 07. So DTX --

13 Thank you, Ms. Andrews.

14 So DTX 007, this is a document relating to voting on a
15 standard that's used for DDR5 PMICs. And we were one of the
16 parties that voted for it, and that is fine. Our concern with
17 this document --

18 If you scroll above; scroll up above.

19 -- is there is this statement that says the sponsor of
20 the document, which is Renaissance, No patent issues on the
21 sponsor's part -- no known patent issues on the sponsor's
22 part. That's our concern about this document.

23 Let me explain what I mean. That disclosure, no patent
24 issues on sponsor's part, is a statement as to whether there
25 are any known essential patents for which there are no --

1 there was a declining to grant a RAND obligation. The concern
2 about this is that they're going to say, Oh, well, that
3 somehow shows that our patent doesn't cover their DDR5 product
4 even though our patent is not essential or related to the
5 standard.

6 It's also -- creates an extreme morass, the reason being
7 is we actually agreed to a RAND obligation if the patents are
8 essential, and so the 'no patent issues on the sponsor's part'
9 is correct even if our patent is essential. It's because we
10 declared it and agreed to RAND it if it was, in fact,
11 essential.

12 And so the fact that Renaissance says there's no known
13 patent issues is really two things--one, it's a surreptitious
14 disclosure obligation; and two, it goes to a very, very
15 complex issue that relates to RAND obligations, relates to
16 disclosures of patents. We actually disclosed this family of
17 patents and we agreed to RAND it. And I can show you that,
18 Your Honor.

19 If we can go to the Milton deck.

20 Give me one moment, Your Honor. I'll pull it up.

21 THE COURT: I guess what I'm lacking here is what
22 the Defendants' argument about the relevance is before I can
23 consider your argument about confusion.

24 MR. SHEASBY: Thank you, Your Honor. I'll sit down.

25 MR. COLVIN: Your Honor, so DTX 14 and DTX 7 are in

1 a similar bucket. These are votes that were taking in the
2 JEDEC meeting regarding power management. You heard earlier
3 that there's going to be testimony in this trial about onboard
4 power management, and these show that -- how Netlist is voting
5 in these meeting minutes regarding power management.

6 So similar to my argument earlier, Your Honor, that I
7 acknowledged the Court wasn't particularly fond of, we think
8 this goes to Netlist disclosure obligations regarding
9 willfulness and their conduct in front of -- in these JEDEC
10 meetings. And so that's what this would tend to show. And so
11 just -- to me the argument is similar to those I made
12 previously with respect to the JEDEC conduct documents.

13 THE COURT: So I understood your argument before.
14 It was that you or your client would have understood that
15 there must be no Netlist patents in this space because they
16 didn't disclose them in connection with these proceedings?

17 MR. COLVIN: That's certainly part of it, Your
18 Honor, yes.

19 THE COURT: And what here would tend to show that?

20 MR. COLVIN: Your Honor, this is showing that
21 Netlist -- how Netlist is voting with respect to this
22 particular specification, and so this is showing that Netlist
23 is voting 'yes' to this specification, showing that they knew
24 about it, they adopted it, they were recommending it, and that
25 combined with the fact that they didn't disclose their patents

1 as we believe they should have, as being potentially relevant
2 under the JEDEC guidance that we looked at earlier, goes to
3 our defense of willfulness.

4 THE COURT: And have any of your witnesses or
5 pleadings referred to this as a basis for your belief that
6 there were no patents for you to infringe?

7 MR. COLVIN: Your Honor, I'm not sure. I'll have to
8 confer with my colleague on that. But as I'm standing here in
9 front of you, I can't talk about -- I just don't know about
10 what our witnesses testified to with respect to this
11 particular document, or this theory. I can sit down and
12 confer and get back to Your Honor, but standing here now I
13 just don't know. I don't want to make a misrepresentation to
14 the Court.

15 THE COURT: All right. Thank you, Mr. Colvin.

16 MR. SHEASBY: Your Honor, I can make a
17 representation to the Court that the--and I'll pull it up in
18 a moment--the willfulness interrogatory response makes in
19 reference to this allegation, nor does any pleading in the
20 complaint, nor does their 30(b)(6) witness. And I'm
21 particularly concerned about that language about no known
22 patent issues because it seriously confuses the jury as to
23 what the disclosure obligations are. He doesn't show it on
24 this page.

25 If we can go back to the PX -- DTX 7.

1 I'm particularly concerned about that no known patent
2 issues language that Renaissance did because it is highly
3 confusing. It relates to situations in which there is know --
4 there was not a RAND commitment made, and Netlist made a RAND
5 commitment as to this -- as to all of its patents.

6 And so I really think, given its lack of disclosure and
7 the interrogatory response and given this complex -- that it
8 really touches upon a very, very complex issue of disclosure,
9 that it's -- the prejudice outweighs any possible relevance,
10 Your Honor.

11 THE COURT: Mr. Colvin, I guess my central problem
12 is that given the fact that there is no essential patent here
13 alleged or FRAND -- RAND obligation, it seems to me that this
14 is just an effort to generate a feeling in the jury that
15 Netlist has improperly concealed their patent, when I don't
16 see how that has anything to do with either willfulness or
17 infringement.

18 MR. REGER: Excuse me, Your Honor. May I be heard?

19 THE COURT: Yes.

20 MR. REGER: Thank you, Your Honor. Tom Reger on
21 behalf of Samsung.

22 Your Honor, one of the critical issues in this case
23 obviously is damages, and under the *Ericsson v. D-Link* case,
24 we must be able to apportion or at least identify the
25 technical value, the technical footprint of the invention of

1 the patented invention and distinguish that from the
2 standardized technology.

3 There is no dispute at issue in this case that the
4 products, the DDR4/DDR5 products are standard compliance
5 products. Whether or not the patent is standard essential or
6 not is a separate question. What we do know is that
7 Mr. Sheasby has asserted that the DDR5 patents are related to
8 onboard PMIC, power management IC. We also know that the
9 standard includes the onboard PMIC with respect to DDR5.

10 So we must be able -- if we want to properly identify the
11 technical value, the technical footprint of the patent, we
12 have to be able to separate that from the standardized
13 portions of that onboard power management. And to do that we
14 look at ballots like this that were voted on by the various
15 members. It shows various contributors of that particular
16 standard. And it goes to damages with respect to JEDEC
17 contributions that Mr. Sheasby did agree is part of this case.

18 Thank you, Your Honor.

19 THE COURT: All right. The ballot issue to me seems
20 to be a different issue than the disclosure issue, and what
21 I've been hearing about is the question of whether or not
22 Netlist made disclosures that Samsung contends were required
23 by JEDEC.

24 The ballot issue you're saying, how does that reflect on
25 the importance of different aspects of the technology?

1 MR. REGER: A couple of different ways, Your Honor.
2 One, it involves -- it shows that there were a number of
3 different companies involved in that standardized technology.
4 It shows that Hewlett-Packard, IBM, Intel, and others that is
5 consistent with the argument that we have made previously and
6 that we have an expert who is going to be talking about that
7 Netlist in and of itself didn't -- was not the only
8 contributor to the power management integrated circuit onboard
9 with respect to DDR5. They are not the only ones who came up
10 with that idea, and there were leading contributors, such as
11 Intel. This supports our -- Mr. Halbert's testimony and his
12 opinions in this case that Intel, for example, was a leading
13 contributor of DDR5. It also goes -- this is with respect to
14 the dates. It also confirms Mr. Halbert's testimony with
15 respect to the development process of DDR5.

16 THE COURT: All right.

17 MR. REGER: Thank you, Your Honor.

18 THE COURT: Thank you, Mr. Reger.

19 MR. REGER: And, Your Honor, in case there was -- I
20 got a little lost there.

21 With respect to that one issue with respect to the
22 patents, no known patent issues on the sponsor's part, we
23 would agree to redact that, Your Honor.

24 THE COURT: All right.

25 MR. REGER: Thank you.

1 MR. SHEASBY: Your Honor, I think if they are going
2 to agree to redact -- so there's the board of directors ballot
3 which references -- and that's DTX 7.

4 THE COURT: Is that the one that has the line in it?

5 MR. SHEASBY: Yeah. That has no relevance to any
6 issue of damages. This is just people voting for the PMIC
7 power management specification. This is just people who
8 voted. So this would only go to a disclosure issue because
9 we were one of the voters.

10 Now, the second issue --

11 THE COURT: How would this go to a disclosure issue?

12 MR. SHEASBY: Well, the fact that we voted and -- on
13 this and didn't -- and then the -- sort of the dangling chad
14 on that would be that we didn't tell anyone we had the
15 patents. So what's the -- so that would be my concern.

16 THE COURT: This doesn't say you didn't tell anyone.

17 MR. SHEASBY: It's true, Your Honor. Listen, if
18 they're going to remove that language, it becomes a much
19 closer call. There's no doubt about it.

20 THE COURT: Well, I will overrule the objection if
21 that reference is redacted.

22 MR. SHEASBY: Thank you, Your Honor.

23 THE COURT: And as -- so that is 7.

24 What about the other meeting minutes, which are 14, 27,
25 and 28? If there's objection to those, let me hear it;

1 otherwise it -- I don't think it's improper for them to show
2 who the other industry leaders in this particular niche of
3 technology are.

4 MR. SHEASBY: Yes, Your Honor.

5 I'll go through them briefly.

6 DTX 14.

7 DTX 14 is -- has no relevance to any issue in this case,
8 as far as we can tell. It's from 2019. It doesn't relate to
9 the adoption of any standard. So our concern about this is we
10 don't know what the relevance of it is. I doesn't relate to
11 the PMIC issue at all.

12 THE COURT: All right. What about 27 and 28?

13 MR. SHEASBY: Yes, Your Honor.

14 So 27 is from 2011, and it was one of the cited prior art
15 references, and on that basis it should be excluded.

16 And 28, same issue. It's from 2018.

17 THE COURT: Can you put those up? I'm sorry.

18 MR. SHEASBY: Yes, sir. So -- yes, Your Honor. So
19 this is DDX 14.

20 THE COURT: Right.

21 MR. SHEASBY: DDX 27. DTX 27, Mr. Huynh.

22 Same issue with this one. We have no idea what the
23 relevance of it is, and it's from 2011.

24 THE COURT: All right.

25 MR. SHEASBY: And then -- but this isn't -- it has a

1 bunch of technical stuff after this. It's not just these
2 cover pages.

3 Scroll down. Keep scrolling to the next page. Keep
4 scrolling.

5 It's -- it has nothing to do with anything --

6 THE COURT: All right. Well, I'll ask them to show
7 me what parts of it they believe are relevant.

8 MR. SHEASBY: And then DTX 28, same issue, Your
9 Honor; not relevant to any issue in the case.

10 Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. REGER: Can I get the elmo?

13 May it please the Court?

14 THE COURT: Yes.

15 MR. REGER: Thank you, Your Honor.

16 The very top, the very first -- I've never done it with
17 my laptop before. I apologize.

18 MR. SHEASBY: Do you want us to put it up,
19 Mr. Reger?

20 MR. REGER: No. I want to show something on my
21 computer.

22 MR. SHEASBY: We have it. Never mind. I see what
23 you're doing.

24 MR. REGER: At the very top of the very first
25 exhibit it said JC40, and I believe he indicated, if I heard

1 him correctly, that this has nothing to do with PMIC or DDR5.
2 The very first standard that we see under JC40 is the power
3 management integrated standard, which is the PMIC. It is
4 relevant to DDR5. So the very first exhibit out of the gate
5 is relevant to issues in this case, relevant to the standards
6 in this case, Your Honor.

7 Moreover, with respect to many of these, the Court
8 expressly allowed these in. They are -- with respect to
9 Mr. McAlexander, there was some invalidity arguments that we
10 -- that were disclosed in the rebuttal report. They tried to
11 strike that, but the Court previously found that they were
12 actually allowed. And one of the fact issues that the Court
13 indicated is when the PMIC standard was first presented and
14 the development process of it. And, again, the very first
15 document out of the gate is JC40, which relates to the power
16 management integrated standard.

17 Thank you, Your Honor.

18 THE COURT: Well, a concern I have, Mr. Reger, is
19 that these are apparently large documents with -- that may
20 have all sorts of irrelevant information, but you have shown
21 me that they also may have relevant information, so what I'm
22 going to do is say that I will overrule the objection to
23 these, but direct that they be redacted. If the Plaintiff
24 wants to do the work of looking and proposing redactions, the
25 Plaintiff can do so, and if the Defendant does not agree to

1 those, then we'll take them back up at the next hearing. But
2 I'll overrule the objections to 14, 27, and 28, subject to
3 redaction.

4 MR. REGER: Thank you, Your Honor.

5 And we will certainly work with the Plaintiff in good
6 faith on any redactions.

7 THE COURT: All right. That takes us to Bucket 3.

8 MR. SHEASBY: Yes, Your Honor. Give me one second,
9 Your Honor. I apologize. I'm sorry, Your Honor. I've lost
10 my way. If you'll indulge me for one -- here we go. No,
11 that's not it. Here it is.

12 Bucket 3 is parole evidence regarding the joint
13 development agreement.

14 So let's pull it up, DTX 04.

15 So DTX 04 is a term sheet that was sent to Samsung in
16 2015. That was not the deal that was ultimately done.

17 Let's go to the next page.

18 That's not the deal that was ultimately done. It talks
19 about \$95 million and other issues. And so our argument is
20 that this is just parole evidence; that there is an agreement
21 in place, the agreement in place is a different deal than this
22 deal, and it shouldn't be -- they shouldn't be letting in
23 evidence other than the actual contract.

24 THE COURT: The parole evidence doctrine would apply
25 if we were trying to interpret the JDLA. How does that relate

1 to this case?

2 MR. SHEASBY: Yeah. So it's a fair point. So they
3 are using this to interpret the JDLA. So this document talks
4 about making a large payment as an NRE, non-recurring
5 engineering fee, and saying that it can be used as a royalty
6 -- as a way of paying royalty, and they're going to use this
7 to say the non-recurring engineering fee in the JDLA that was
8 actually signed was, in fact, a royalty. So they are, in
9 fact, using this to interpret the 2015 JDLA. That's what
10 they're doing with the document, Your Honor.

11 THE COURT: So you're saying that the express terms
12 of the JDLA describe the payment as an engineering fee?

13 MR. SHEASBY: Yes, Your Honor.

14 THE COURT: All right. Thank you.

15 Let me hear from the Plaintiff about the relevance.

16 MS. REARDON: If I can get access to the slides.
17 Great.

18 May I proceed, Your Honor?

19 THE COURT: Yes.

20 MS. REARDON: Your Honor, DTX 4 is an email with
21 an important attachment as the parties were negotiating the
22 agreement that led to the JDLA agreement back in April of
23 2015. And so you can see here this is an email from Netlist
24 to Samsung enclosing a term sheet. And I agree the terms that
25 we'll look at are different than what the parties agreed to

1 ultimately. Right? But in good faith the parties were
2 negotiating back and forth about what they believe the intent
3 of the agreement was. And at trial we're going to hear a lot
4 about what the parties were doing when they were meeting and
5 specifically about this April 2015 meeting. In fact, I
6 believe there is some admitted -- there is an admitted --
7 pre-admitted presentation about an April 2015 meeting. And as
8 counsel said, the JDLA itself talks about this \$8 million
9 payment as a non-recurring engineering fee, but in the
10 attachment --

11 And if I can pull up -- I'll grab DTX 26, if you'll give
12 me just a moment. I'm sorry, Your Honor. It's DTX 04.

13 And if I can have the elmo, please.

14 On the attachment there are these yellow post-it notes.
15 So here is a term sheet where the parties are negotiating what
16 the terms of the agreements might be. And they note -- and
17 these are Netlist's -- this is Netlist's email to Samsung,
18 and in the email Netlist says, Here is the term sheet outline
19 proposed by Netlist, and they state these terms cloak the
20 license and allow the payments to be cast as NRE rather than
21 royalty payments. And that cloaking language, if we go down
22 further, says it is basically a license agreement cloaked in a
23 stand-down.

24 And so we believe this is relevant to damages and the
25 comparability of the JDLA in a hypothetical negotiation

1 because it's what the parties were negotiating about and what
2 they were -- they believed the \$8 million payment would be
3 for.

4 THE COURT: So you are seeking to use this to alter
5 the terms of the written agreement?

6 MS. REARDON: I wouldn't say alter the terms of the
7 agreement, per se, but certainly what the intent of the
8 contracting parties is relevant at the hypothetical
9 negotiation. And this is Netlist's term sheet to Samsung, and
10 so Netlist witnesses have testified about what their intent
11 and what they believe the term sheet to be about. Samsung's
12 witnesses will testify about what it believed the term sheet
13 would be about. And I would say Netlist chose not to depose a
14 Samsung witness who could lay the foundation for this document
15 as well.

16 THE COURT: Well, as far as the foundation goes, I
17 guess you're saying this document was generated by Netlist?

18 MS. REARDON: That's correct, Your Honor.

19 THE COURT: All right.

20 MS. REARDON: Thank you.

21 THE COURT: Thank you.

22 MR. SHEASBY: Your Honor, the document is parole
23 evidence. We actually entered into a license agreement in the
24 JDLA. We have a term that says NRE, not royalty, and using
25 this document to alter the terms of the contract would be

1 improper.

2 THE COURT: You know, thinking about that, since
3 this is not an effort to enforce the contract but, rather, the
4 contract is being used to show just as evidence of value, I
5 don't know that the parole evidence doctrine has any
6 application here.

7 Do you have any authority that would suggest that it
8 applies outside an action to enforce the agreement?

9 MR. SHEASBY: Yeah. So there actually is an action
10 to enforce the -- this is an action to enforce the contract.
11 There is a license in place and there is a dispute about
12 whether the HBM is covered by that license. And so I can
13 say that this -- and that's live in front of jury, so there
14 is a dispute about the scope of this contract in this case.

15 The second issue is that there are really inflammatory
16 language--cloak. There's going to be no dispute that we
17 didn't cloak a license to them. We literally granted them a
18 license in the JDLA. And so that type of language is
19 extremely, extremely inflammatory.

20 THE COURT: Well, was it your language, your
21 client's language?

22 MR. SHEASBY: So that's a disputed issue. It's --
23 our client says that it was Samsung's language--not our
24 language--that they told us to put in in a meeting. The
25 agreement has -- there's a morass associated with the

1 document. But to be clear, the dispute --

2 If we can pull back up DTX 4. Scroll down to the second
3 page. If you blow up the bottom, the bottom three boxes.

4 That bottom thing, that's not -- doesn't even exist.

5 There -- we -- there -- this deal was not the deal that was
6 done. The deal that was done has an express license in it.

7 And the problem is, is that using this document is done for
8 the exact purpose of derogating what the express terms were.

9 And they are trying to enforce the contract, and that's going
10 to be live in front of the jury as to HBM.

11 THE COURT: Okay. You're saying -- tell me again
12 about who's trying to enforce this agreement and how.

13 MR. SHEASBY: They're saying the agreement applies
14 to HBM, and Judge Gilstrap said there's a question of fact as
15 to whether it applies to HBM.

16 THE COURT: The agreement was terminated. Right?

17 MR. SHEASBY: That's right. But there's -- but it
18 still -- still the fact they terminated, they are claiming the
19 benefit of it from before termination as to HBM.

20 THE COURT: All right. So they're saying that it --
21 when -- before it was terminated it covered HBM.

22 MR. SHEASBY: Correct. And we're saying it does
23 not.

24 THE COURT: But -- all right. This issue doesn't
25 relate to that scope issue. That --

1 MR. SHEASBY: That is absolutely the case. So the
2 issue that we have is that these terms were not the final
3 terms that were agreed to. The final terms that were agreed
4 to -- this talks about a \$95 million payment, up-front NRE
5 payment that would be used as an effective royalty. That's
6 not the deal we ultimately had. The deal we ultimately had
7 was an \$8 million NRE with an actual true joint development
8 with a cross license and a covenant not to sue.

9 THE COURT: Now, do you dispute there will be
10 witnesses on both sides that will be asked about the
11 negotiations that led to the execution of the JDLA?

12 MR. SHEASBY: I do dispute that, Your Honor. So
13 this document was sent to one person. It was then -- this
14 document is between two people, Jung Bae Lee and Jung Bae Kim.
15 Scroll up above.

16 This is from J.B. Kim at Netlist to Jung Bae Lee at
17 Samsung. Jung Bae Lee is not coming to trial. Neither is
18 Jibum Kim. And so these people -- no one at trial who was
19 involved in this email exchange is going to be available to
20 discuss this document. You are assuming that these two
21 gentlemen did not share this document with others in their
22 respective organizations?

23 MR. SHEASBY: That's right. So there is a guy named
24 Hyun-Ki Ji who they have on their list. Hyun-Ki Ji testified
25 that he has no recollection of the negotiations.

1 So there are dozens of term sheets that could come in.
2 They've cherry-picked one that's an early, early evolution of
3 the deal. And there's nothing wrong with cherry-picking.
4 That's not a pejorative term; it's the one they think is most
5 valuable. But this is not the final deal. The deal is the
6 deal.

7 And talking about a previous deal that was \$95 million
8 up-front with a covenant not to sue and no joint development
9 has nothing to do with the relationship the parties actually
10 entered into. And J.B. Lee is not going to come and testify
11 regarding this document and what Samsung believed it meant and
12 neither is Jibum Kim.

13 THE COURT: Well, is the JDLA itself going to be in
14 evidence?

15 MR. SHEASBY: The JDLA is going to be in evidence.

16 THE COURT: All right. Thank you.

17 Does the Defendant have any legal argument on the parole
18 evidence issue?

19 MS. REARDON: Your Honor, I don't have a case in
20 mind, and that's specifically because, you know, this isn't a
21 contract dispute. We aren't trying to introduce evidence and
22 relitigate the contract because the Court found that there was
23 a contract and it was terminated as of July 15th, 2020, and
24 there is one minor issue as to whether the foundry HBM
25 products were covered by that license. We're not trying to

1 enforce any contract here or anything like that.

2 If I can point out -- if I could have the slides, please.

3 And it's a little bit difficult to see in this snip of
4 the email, but it says, "Attached is the term sheet outline
5 proposed by Netlist." And it goes on to say, "We tried to
6 make it simple and address concerns from Samsung," but this is
7 a term sheet sent from Netlist to Samsung.

8 And Mr. Sheasby suggested that no one would be able to
9 talk about this document. I disagree that Hyun-Ki Ji, who was
10 on our trial witness list, was not knowledgeable on the
11 licensing negotiations and could not talk about this proposal
12 specifically. He oversaw the negotiations. He was not
13 deposed in this case. He was deposed in the CDCAL case,
14 and those transcripts have been made available for depo
15 designations in this case as well.

16 And he also referenced in Mr. Ji bum Kim at Netlist who
17 sent this document who was also not deposed in this case,
18 which is correct, which counsel correctly represented, but his
19 deposition is also in by designation in this case, and he
20 testified that with respect to this document he was doing
21 what I think he called it the folks back at the home office
22 told him to do, and that would be his -- the CEO Mr. Hong who
23 was available in his deposition.

24 THE COURT: Thank you, Ms. Reardon.

25 MS. REARDON: Thank you, Your Honor.

1 THE COURT: I'm going to overrule the objection to
2 DTX 4 and 26. I don't think the parole evidence doctrine
3 applies in the context of this case, and I think that the
4 negotiations that led to the JDLA appear to be sufficiently
5 relevant. So -- anyway, those objections are overruled.

6 That takes us to DTX 5.

7 MR. SHEASBY: It's actually DTX 26 is in the
8 same -- is the second document.

9 THE COURT: That's the email that this was attached
10 to?

11 MR. SHEASBY: No. This is this long document that
12 discusses sort of encumbrances and previous --

13 THE COURT: This is from Samsung?

14 MR. SHEASBY: It's an exchange between Samsung and
15 Netlist. So the bottom is -- so the bottom is an email from
16 -- the bottom is Netlist to Samsung, and then above that is
17 Samsung to Netlist. And they're fighting about lots of
18 different terms, and this strikes us as just a questionable
19 relevance. It has to do with previously indentures that exist
20 with Silicon Valley Bank and other issues, and we don't see
21 what the relevance of this could be.

22 THE COURT: Is there something in it that you can
23 point to that is unfairly prejudicial?

24 MR. SHEASBY: Scroll down. Scroll up.

25 So I think these things we gave you -- you know, I'll let

1 the document in. It's fine, Your Honor. I'll going to lose
2 this. I withdraw my objection.

3 THE COURT: All right. No. 26 will be in.

4 So you can move to DTX 5.

5 MR. SHEASBY: DTX 5 is a communication from our
6 lawyers in the Central District of California case to
7 Samsung's lawyers in the Central District of California case
8 putting them on notice of the need to license our patents. It
9 has a couple of issues. One, it's lawyer-to-lawyer. That,
10 you know -- I think it's a close call. I know the Court
11 determined that lawyer-to-lawyer is not allowed, is generally
12 not admissible.

13 There's a second issue which refers to three patents
14 that are asserted against Samsung in the District of Delaware.
15 Netlist -- Samsung filed a DJ based on those three patents and
16 we counterclaimed for infringement, and so discussing those
17 three patents is going to inevitably have to lead to an
18 explanation that there's another lawsuit. I believe the
19 purpose of this document is for them to show -- see, when
20 that he told us they should license, they didn't list the
21 patents-in-suit. The Court has already ruled as to when they
22 were given notice of the patents-in-suit.

23 Thank you, Your Honor.

24 THE COURT: All right. Let me hear from the
25 Defendant.

1 MS. REARDON: Your Honor, with respect to DTX 05,
2 counsel is correct. This is relevant to when Samsung did or
3 did not receive notice of the asserted patents. And counsel
4 -- or in previous arguments it's been suggested that and it
5 seems that Netlist is going to present evidence that they
6 somehow gave us some sort of notice with respect to
7 infringement of certain patents.

8 And so to the extent that they're going to introduce that
9 evidence, we think we should be able to introduce this letter
10 which demonstrates that after the termination of the JDLA,
11 we -- which -- and this letter is dated October 15th, 2020,
12 that the notice that was given was to three wholly separate
13 patents. And we don't think that the Delaware litigation will
14 be an issue because there is -- and to the extent there is any
15 sentence about it, we would react to it, but I don't believe
16 it references any Delaware litigation. You know, that would
17 be a subsequent -- that's something subsequent that happened
18 after this letter. It doesn't say we're -- you know, we're
19 filing a complaint in Delaware.

20 THE COURT: How does the fact that they gave you
21 notice of infringement of other patents have anything to do
22 with the issues in this case?

23 MS. REARDON: Yes, Your Honor.

24 Their witnesses have suggested that there was some sort
25 of notice sent to Samsung about infringement of patents

1 following the termination of the JDLA, and the only evidence
2 in the record--that we'd like to get in the record, I guess I
3 should say--but the only evidence that's been presented is
4 this letter--right?--which does not show that there was any
5 notice of infringement of the three asserted patents.

6 THE COURT: I really don't see how the fact that you
7 got one letter means that there wasn't another letter and that
8 it relates to other litigation which violates another MIL.
9 It's -- and it's not even between the parties; it's between
10 counsel. I'll sustain the objection to DTX 05.

11 MR. SHEASBY: DTX 25.

12 DTX 25 --

13 Scroll down.

14 -- is an email exchange between two Samsung employees.
15 One is Craig Orr. Craig Orr was not disclosed as a witness
16 having knowledge in this case under the Rule 26 disclosure.
17 The other exchanger on this is Jung Bae Lee. Jung Bae Lee is
18 the president of Samsung. He's not coming to trial, and he
19 was not deposed or asked about this document. So --

20 THE COURT: All right. It sound like they have a
21 hearsay issue. If they can get past that, I'll give you a
22 chance to address other issues.

23 MS. REARDON: Sure, Your Honor.

24 With respect to the hearsay question, we would agree that
25 this is a -- this is entitled to an exception in terms of a

1 present sense impression. Both Mr. Craig Orr who is -- who
2 recites in the email further down his impressions of the
3 meeting, and Mr. Jung Bae Lee, they are capturing their notes
4 about what took place in that meeting.

5 THE COURT: You know, present sense impression
6 explicitly excludes look back at history, which is what it
7 sounds like you're describing this to be. It has to be made
8 while or immediately after the declarant perceived the event.

9 MS. REARDON: Your Honor, I believe the meeting took
10 place in April of 2015, and these notes were captured right at
11 that same time.

12 THE COURT: The same month? That's not my standard.
13 Or while or immediately after.

14 MS. REARDON: I wish I had a better exact date for
15 you. But there was I think at least one meeting that was
16 taking place in April, and if you look at Mr. Orr's email
17 specifically, Mr. Jung Bae Lee's email was translated so the
18 date and the capture are missing.

19 But if I could have the elmo, please.

20 THE COURT: This is hearsay. I'll sustain the
21 objection.

22 MS. REARDON: Your Honor, if I may, the only thing I
23 wanted to point out is that Mr. Orr said, "The notes I
24 captured from today's meeting."

25 THE COURT: Okay. Same day is still -- present

1 sense impression is about something you're perceiving, and it
2 also has to be relevant. His impression of the meeting is of
3 questionable value, but in any event.

4 All right. Go on to 9.

5 MR. SHEASBY: DTX 9.

6 Samsung's counsel prepared a chart that lists a large
7 number of our patents and the state of the patents, as well as
8 whether they were or were not in litigation. This was done
9 for an apportionment procedure that Mr. Meyer applied to the
10 SK hynix license agreement. That apportionment analysis was
11 stricken.

12 So I have a couple of issues. One this is actually not
13 evidence. This is a document prepared by Samsung's counsel.
14 Two, it discloses what patents have been in litigation, which
15 creates an issue. And three, it has no relevance because this
16 was used for bucketing methodology that the Court struck. If
17 you look at Docket 432 at 4, you'll see where he struck the
18 apportionment analysis that it is based on.

19 Thank you, Your Honor.

20 THE COURT: All right. Why isn't this hearsay,
21 Ms. Reardon?

22 MS. REARDON: Your Honor, this isn't hearsay because
23 it is -- DTX 9 is based on market reports, Netlist's own
24 production of its patent portfolios and information from the
25 European Patent Office.

1 THE COURT: So is it a market report?

2 MS. REARDON: It's based on market reports.

3 THE COURT: That doesn't get you past hearsay. I
4 can come and say all kinds of stuff based on good sources, but
5 this document itself appears to be hearsay. It's an
6 out-of-court declaration by your side that is offered for the
7 truth.

8 MS. REARDON: Understood, Your Honor.

9 THE COURT: All right. I'll sustain the objection
10 to 9.

11 MR. SHEASBY: DTX 1 is unelected prior art, and,
12 therefore, it should not come into evidence. In fact, it's
13 undisclosed prior art, not just unelected.

14 MR. COLVIN: Your Honor, DTX 1 was subject to a
15 motion to strike and quite a bit of dialogue in front of the
16 Court at the pretrial conference. The reason this is relevant
17 and it has nothing to do with prior art is because their
18 technical expert created an argument on -- in his opening
19 report that some feature of our product could be looked at as
20 something that could stand in for the value of their patent,
21 and then their expert took that analysis and used it for his
22 damages case.

23 Our expert Doctor Robins found this reference that rebuts
24 that. He found several references that rebut it, but this is
25 one of the main ones. And this shows that what their expert

1 used to value -- to create a technical value for their patent
2 just can't be right because the particular structure that our
3 product uses, which is found nowhere in their patent, is
4 something that came before, and that's shown here in this
5 reference.

6 Now, Judge Gilstrap and I had a big talk at the pretrial
7 conference. He ordered me to put on Doctor Robins based on my
8 representation to him that we would not use any of this stuff
9 for invalidity purposes. I'm pretty sure he's going to throw
10 me in jail in I attempt to do that, and we certainly have no
11 intention of getting close to that line.

12 And Mr. Sheasby's right. This is not disclosed as prior
13 art. It's got nothing to do with prior art. This has to do
14 with rebutting a very robust technical benefits section of
15 their expert's report. So that's how we would use it. And I
16 can certainly walk Your Honor through the details of that, but
17 it is not prior art, but it is a very important document for
18 us.

19 THE COURT: Why do you need this in evidence?

20 MR. COLVIN: Well, we need it in evidence, Your
21 Honor, because a big part of their case is that -- let me just
22 put the document up, Your Honor. A big part of their case,
23 Your Honor, is that the particular structure that is shown in
24 this patent, and it won't mean much to you, but this is a --
25 just know that there's a structure here that's an important

1 part of our product. It's not part of their patent. Their
2 expert says that this structure is a stand-in for the
3 technical value of their patent. And it's very important for
4 us to be able to show the jury that the structure he points to
5 can't stand in for the value of their patent because it
6 existed many, many years before their patent.

7 And so this -- the jury needs be able to see this
8 evidence, hold this evidence, and take it back to their room
9 when they're deliberating and see that, Boy, that's right;
10 what Netlist's expert Doctor Brogioli said just doesn't work
11 in light of this Shibata reference DX 1. It's very important
12 for them to be able to hold and to study -- not for prior art.
13 It's got nothing to do with prior art. This has to do with a
14 structure that we use in our product.

15 And they say that that structure, which again, isn't --
16 there's no pictures like that in their patent. We're not
17 using it to say that this is -- that their patent should be
18 invalid. We're using this to say the structure they point to
19 in our product as showing a benefit of their patent just can't
20 be true.

21 MR. SHEASBY: If I could have DTX 1, please.

22 Your Honor, the document is prior art. It's dated 2006.
23 They're using the document to claim a practicing the prior art
24 defense, which is what they said. There's no way a jury is
25 going to be able to parse this finely between something from

1 2006 and then putting it in front of the jury and saying, We
2 practiced this technology from 2006; therefore, we don't
3 infringe or, therefore, Netlist's technology is not valuable.

4 This is -- whatever use can be made of it for damages is
5 something Judge Gilstrap will decide, but having this in front
6 of the jury could do nothing but suggest that our reference --
7 that our patent is invalid. It is prior art and they're
8 saying they practice the prior art. That's the argument that
9 he just rehearsed for you, Your Honor.

10 In addition to being an improper argument under Federal
11 Circuit law, it is -- the ability of the jury to parse that
12 from invalidity and other references is not going to be
13 possible. This is not about whether they can -- there's some
14 purpose to use it. There's a -- the issue is about whether it
15 should be admitted into evidence. Just saying prior art is
16 not being used for prior art doesn't solve your problem.

17 THE COURT: All right. Thank you.

18 Mr. Colvin, I don't see how this is not a prior art use.
19 You're claiming that the Plaintiff's patent is not entitled to
20 the benefit of this because it's -- you contend that feature's
21 shown in this other patent before it, which is another way of
22 saying that they don't have a valid claim to their patent.

23 MR. COLVIN: That's not quite it, Your Honor.
24 There's a bit of nuance there that I think is important.

25 In order to infringe their patent, you have to do a bunch

1 of things. Call it A, B, C, and D. They take a feature of
2 our product that is not A, B, C, or D, and they say, Based on
3 feature Z, this is how we can assess the value of their
4 patent. This is how Netlist says, Based on feature Z we can
5 use this valuation of patent.

6 THE COURT: Why didn't you make that same argument
7 by saying the feature they're claiming is not claimed in their
8 patent?

9 MR. COLVIN: Your Honor, their expert goes to great
10 lengths to say that -- they map their claims onto part of this
11 feature. This stair-step feature that is shown in this
12 Shibata reference, this DX 1, is a very specific thing their
13 patent has nothing to do with, yet their expert says this
14 stair-step feature is what is -- is a way to measure the value
15 of their patent. And we need to be able to say, No, that's
16 not right, because this stair-step feature existed in the
17 prior art. The stair-step feature came before their patent,
18 which obviously anything that comes before the patent is
19 technically prior art.

20 That doesn't mean we're going to use it to invalidate the
21 patent. We're absolutely not. We can't use this to
22 invalidate the patent. But we need to be able to show the
23 jury, and we need to have the jury to really be able to study
24 and understand this reference so that Netlist can't get away
25 with saying this stair-step feature, which is nowhere in their

1 patent, is somehow a way to value their patent. This patent,
2 this Shibata reference is how we do that, and it is a central
3 defense in our case, Your Honor.

4 THE COURT: You know, your use of that patent seems
5 too much to me like an invalidity -- a back door invalidity
6 claim. You can certainly have your expert identify that the
7 stair-step has been in the art, and if you think that you've
8 developed a basis to argue the proper use of that you can
9 approach and seek leave, but I don't think that that should be
10 pre-admitted, and, therefore, I'm going to sustain the
11 objection to DTX 1 at this time.

12 And that takes us to 17.

13 MR. SHEASBY: Yes, Your Honor. So these are a bunch
14 of issues that come together. They're hearsay publications or
15 articles. There is no business record foundation laid for any
16 of them. And in light of that they are inadmissible.

17 THE COURT: All right. What is the response to the
18 hearsay objection?

19 MR. COLVIN: If I can get my slides, Ms. Andrews.

20 Your Honor, these statements are qualified as an
21 exception because they are learned treatises, periodicals, or
22 pamphlets.

23 THE COURT: You do understand that rule says that
24 learned treatises cannot be used as exhibits for the jury?
25 Are you familiar with that?

1 MR. COLVIN: I'll take Your Honor's word for that
2 one.

3 THE COURT: Well, you had it on the screen up there,
4 so I didn't know -- I assume you read it. I have the glow of
5 a computer here. I think that you left off of your slide the
6 last sentence of 803 (18) which says if admitted, the
7 statement may be read into evidence but not received as an
8 exhibit. So is that what you're relying on?

9 MR. COLVIN: I believe you're right, Your Honor, and
10 in light of that I think we're done.

11 THE COURT: All right. Well, I'll sustain the
12 objection, but that doesn't mean you can't seek to use them
13 with your witness in accordance with that provision.

14 I'm going to issue a written order that will confirm what
15 we've done here, but I'll just say that the order will say to
16 gather back here on Tuesday if there are -- if you're unable
17 to agree on the redactions.

18 Is there anything else that we need to try to put on the
19 record?

20 MR. SHEASBY: Your Honor, I just have about 15
21 minutes on *Mentor* if --

22 THE COURT: Yes. I would ask you to just wait for
23 me. Okay? I'll be back.

24 MR. SHEASBY: Thank you for your patience today,
25 Your Honor.

1 THE COURT: All right. And we'll tell you -- does
2 it make a difference what time on Tuesday?

3 MR. SHEASBY: Not for Plaintiff.

4 MR. COLVIN: No, Your Honor. We'll be here.

5 THE COURT: All right. Then we'll probably say
6 1:30. But anyway.

7 All right. Thank you.

8 (End of hearing.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I HEREBY CERTIFY THAT THE FOREGOING IS A
2 CORRECT TRANSCRIPT FROM THE RECORD OF
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE
6 COURT AND THE JUDICIAL CONFERENCE OF THE
7 UNITED STATES.

8
9 S/Shawn McRoberts

04/08/2023

10 _____ DATE _____
11 SHAWN McROBERTS, RMR, CRR
12 FEDERAL OFFICIAL COURT REPORTER
13
14
15
16
17
18
19
20
21
22
23
24
25

Shawn M. McRoberts, RMR, CRR
Federal Official Court Reporter